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**“To promote the Progress of Science and useful Arts . . . .”**

*Report to the Librarian of Congress*

*by the Register of Copyrights*

# THE COPYRIGHT OFFICE

## **PASSAGE OF THE REVISION BILL**

On Tuesday, the nineteenth day of October of America's Bicentennial year, President Gerald R. Ford signed into law the long-awaited bill for the general revision of the copyright law. With this signature the United States took a dramatic step toward a horizon beyond the intellectual property trails worn smooth by copyright practitioners since the inception of a federal literary property statute in 1790, the fourteenth year of our independence. The culmination of many years of sustained effort by its proponents, the new statute, known as Public Law 94-553, an Act for the General Revision of the Copyright Law (title 17 of the United States Code), represents the fourth general revision of that legislation and the first such revision since enactment of the Act of 1909 in the closing hours of the last term of President Theodore Roosevelt.

The final legislative phase preceding passage of the conference version of the bill by both the Senate and House of Representatives on September 30, 1976, began on February 19, 1976, when the Senate unanimously passed S. 22 by a vote of 97 to 0, a tribute to the patience and leadership of the late Senator John L. McClellan of Arkansas, chairman of the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary. On August 3, 1976, following twenty-two days of public mark-up sessions, the House Judiciary

Subcommittee on Courts, Civil Liberties, and the Administration of Justice favorably reported S. 22 by a unanimous vote, likewise a tribute to the chairmanship and unflagging energy of Representative Robert W. Kastenmeier of Wisconsin. The full Committee on the Judiciary of the House of Representatives reported favorably on S. 22 on August 27, 1976. As so reported, the bill was substantially identical with that reported on August 3 by the subcommittee as an amendment in the nature of a substitute to S. 22. The careful and comprehensive work of the House subcommittee was assisted by the *Second Supplementary Report of the Register of Copyrights on Copyright Law Revision*, an extensive summation of legislative history with an analysis of the technical issues embodied in the revision legislation.

In spite of the press of legislative business in the waning months of a presidential election year, the House of Representatives approved S. 22 on September 22, 1976, by the decisive margin of 316 to 7. A week later the conference report, which reconciled the differences between the Senate version of S. 22 as passed on February 19, 1976, and the House version as passed on September 22, was submitted by the committee of conference to the Congress. The following day, Thursday, September 30, 1976, both the Senate and House of Representatives accepted the conference version of the bill. The die was cast. The presidential signature

on October 19, 1976, capped the pyramid inaugurating an unprecedented transformation of laws implementing the Constitutional mandate empowering the Congress "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors . . . the exclusive Right to their respective Writings . . ."

The new copyright statute that will become fully effective on January 1, 1978, superseding the Copyright Act of 1909, as amended, includes a number of significant innovations. Thus, instead of the present dual system of protecting works under the common law before publication and under the federal statute thereafter, the new law establishes a single unitary system of statutory protection for all copyrightable works, whether published or unpublished.

The term of copyright protection for works created on or after January 1, 1978, will be equal to the life of the author plus an additional fifty years after the author's death. The new term for works made for hire and for anonymous and pseudonymous works will be seventy-five years from publication or one hundred years from creation, whichever is shorter. This same term is also generally applicable to unpublished works already in existence on January 1, 1978, that are not protected by statutory copyright and have not yet entered the public domain.

For works already under statutory protection, the new law retains the present term of copyright of twenty-eight years from first publication (or from registration in some cases), renewable by certain persons for a second period of protection, but increases the length of the second period from twenty-eight to forty-seven years. Copyrights subsisting in their second term at any time between December 31, 1976, and December 31, 1977, inclusive, are automatically extended to last for a total term of seventy-five years from the date they were originally secured, without the need of further renewal. However, copyrights in their first term on January 1, 1978, must still be renewed during the last (twenty-eighth) year of the original copyright term to receive the full new maximum statutory duration of seventy-five years.

The judicial doctrine of "fair use," one of the most important and well-established limitations on the exclusive rights of copyright owners, receives express statutory recognition for the first time in the new law, which provides specific standards for

determining whether particular uses fall within this category. In addition to the provisions for fair use, the new law also specifies conditions under which the making or distribution of single copies of works by libraries and archives for noncommercial purposes will not constitute an infringement of copyright.

The new law establishes an independent five-member agency in the legislative branch named the Copyright Royalty Tribunal and entrusts this body with specific regulatory authority governing the procedures and responsibilities for disbursement of funds derived from the use of copyrighted works in cable television transmissions, jukebox performances, and certain other categories where copyright royalty rates are fixed by law.

The limited compulsory license provisions of the present law are extended by the terms of the new act to include the payment of royalties for the secondary transmission of copyrighted works on cable antenna television (CATV) systems, the performance of copyrighted music in jukeboxes, and the noncommercial transmission by public broadcasters of published musical and graphic works. Retained in the new law, with some changes, are the existing provisions in the present law permitting compulsory licensing for the recording of music.

Registration in the Copyright Office under the new law will not be a condition of copyright protection but will be a prerequisite to an infringement suit. Subject to certain exceptions, the remedies of statutory damages and attorney's fees will not be available for infringements occurring before registration. However, if a work has been published in the United States with notice of copyright, copies or phonorecords must be deposited in the Copyright Office for the collections of the Library of Congress, not as a condition of copyright protection, but rather under provisions of the law subjecting the copyright owner to certain penalties for failure to deposit following written demand by the register of copyrights.

#### REVISION MOVEMENT

The Copyright Act of 1976 embodies essentially the same provisions as its predecessors, H.R. 4347 and S. 1006, introduced in both Houses on February 4, 1965, at the beginning of the 89th Congress, by Senator McClellan, chairman of the Senate Judiciary

Subcommittee on Patents, Trademarks, and Copyrights, and Representative Emanuel Celler of New York, chairman of the House Committee on the Judiciary.

These bills represented complete revisions of the original draft bills for revision, H.R. 11947 and S. 3008, which had been introduced in the House and Senate, respectively, on July 20, 1964, during the second session of the 88th Congress. Both earlier versions had taken form as an outgrowth of efforts between 1961 and 1964 to produce a consensus among participating representatives of the many diverse interests affected by the copyright law. Of considerable importance in arriving at these results had been a Panel of Consultants on General Revision, formed under the auspices of the Copyright Office. The 1965 bills represented a complete redraft of their 1964 counterparts, based upon a review and analysis of the many written and oral comments made upon the latter. The publication in May 1965 of the *Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Revision Bill*, coincided with the commencement of congressional

hearings in the House of Representatives before Subcommittee Number 3 of the Committee on the Judiciary, under the chairmanship of Mr. Kastenmeier and Mr. Celler, respectively.

Between May 26 and September 2, 1965, a total of twenty-two days of public hearings were held which yielded of 1,930 pages of printed text including 150 written statements in addition to the oral transcript, the testimony of 163 witnesses representing the widest spectrum of public and private interests in the proposed legislation. Sharp conflicts on some of the major issues presented by the bill did not prevent a flood of compliments about the remarkable thoroughness of the legislative preparation and the intelligent, germane, and dispassionate statements of the many witnesses. On October 12, 1966, following fifty-one executive sessions of the House Judiciary Subcommittee, Chairman Celler's full Judiciary Committee favorably reported the bill as amended in the 279-page Report 2237 (89th Congress, 2d Session), an unusually valuable addition, at that time, to the legislative history of the general revision bill.

In the meantime, hearings initiated in August



*Representative Emanuel Celler of New York, who in 1964, as chairman of the full Judiciary Committee of the House of Representatives, introduced in the House the first bill in the current movement for general revision of the copyright law. He was a strong proponent of copyright legislation throughout his long congressional career, which extended from 1923 to 1973.*



*Representative Robert W. Kastenmeier of Wisconsin, chairman of the subcommittee of the House Judiciary Committee that held extensive hearings on the copyright revision bill, beginning in 1964. As floor manager of the bill, he led it to final passage in the House of Representatives.*



*The late Senator John L. McClellan of Arkansas, chairman of the Senate Judiciary's Subcommittee on Patents, Trademarks, and Copyrights, introduced the first copyright revision bill in the Senate in 1964 and piloted the bill to final passage in 1976.*



*Arthur Fisher, who became register of copyrights in 1951, took a leading part in the creation of the Universal Copyright Convention. He initiated the movement for general revision of the copyright law in 1955 and directed it until his death in 1960.*

1965, before the Senate Judiciary Subcommittee on S. 1006 temporarily resumed on August 2, 1966, under the acting chairmanship of Senator Quentin N. Burdick of North Dakota, on the specific question of community antenna television systems.

Reintroduced in both Houses at the outset of the 90th Congress as H.R. 2512 and S. 597, the bill was once again, on March 8, 1967, the subject of another Report by the House Judiciary Committee, Number 83 (90th Congress, 1st Session) this time without further amendment but with dissenting views. On April 11, 1967, by a vote of 379 to 29, the measure was passed by the House of Representatives with several important amendments. Although the structure and content of the bill had remained substantially intact, drastic revisions in the compulsory licensing provisions relating to jukebox performances had been made, and the exemptions for instructional television were considerably broadened. Moreover, the provisions dealing with community antenna transmission were dropped entirely, theoretically exposing CATV systems to full liability for copyright infringement under the bill.

On April 28, 1967, the Senate Judiciary Sub-

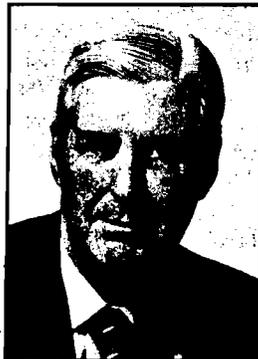
committee, under the joint chairmanship of Senators McClellan and Burdick, completed ten days of hearings on S. 597 begun in mid-March that produced 1,383 pages of printed oral transcript and written statements. Although these hearings did not consider the problem of CATV, which had been the focus of testimony in August of the previous year, other controversial issues emerged, of which probably the most important concerned the use of copyrighted works in automated information storage and retrieval systems. The absence of any ready legislative solution to these questions made it clear that the 90th Congress would not see completed action on copyright revision.

The impact of these emerging controversies slowed the momentum acquired by the revision program after the decisively favorable vote of the House of Representatives in passing H.R. 2512. The midyear landmark Supreme Court decision in *Fortnightly Corp. v. United Artists Television, Inc.*, 392 U.S. 390 (1968), gave marked impetus to the same tendency since the affected industries opposed any further legislative action until they had had time enough to absorb and evaluate the results.

The dwindling momentum also aroused concern



*The late Abraham L. Kaminstein, who was register of copyrights from 1960 until 1971, gave new impetus to the movement for general revision. The bill finally enacted in 1976 is, in its principal features, the measure prepared under his direction.*



*George D. Cary, deputy register of copyrights from 1961 to 1971 and register from 1971 to 1973, figured prominently in the Copyright Office's activities leading to general revision.*



*Abe A. Goldman, who was chief of the revision research program, later general counsel of the Copyright Office, and then in 1973 acting register of copyrights, played an important role in the revision effort.*



*Barbara Ringer, register of copyrights since 1973, one of the principal architects of the revision bill, received the President's Award for Distinguished Federal Civilian Service in recognition of her extraordinary achievement in the movement to revise the copyright law.*

about the status of copyrights subsisting in their second term but due to expire before December 31, 1967. Anticipating enactment of a general revision bill substantially lengthening the duration of copyrights already in effect, the Congress had adopted in 1962, and again in 1965, two measures extending the term of renewal copyrights otherwise due to expire. In the face of the protracted slowdown in the revision movement, Congress passed the third extension bill, which became Public Law 90-141 on November 16, 1967. Before enactment of the new copyright law was finally achieved in 1976, a total of nine interim extension bills had been passed, automatically extending the duration of copyrights subsisting in their second term to seventy-five years from the date they were originally secured.

In the first month of the 91st Congress, the chairman of the Senate Subcommittee on Patents, Trademarks, and Copyrights introduced a new revision bill, S. 543, which was identical with its predecessor, S. 597, except for technical amendments and the addition of a provision for establishment of a National Commission on New Technological Uses of Copyrighted Works. On December 10, 1969, Senator McClellan's subcommittee favorably reported S. 543, with an amendment in the nature of a substitute, but the cable television issue foreclosed further action in the full Judiciary Committee. Early in the succeeding 92d Congress, Senator McClellan introduced S. 644, which, except for minor amendments, was identical with the revision bill reported by the subcommittee in late 1969. The 92d Congress saw no further action on general revision legislation while proponents awaited formulation and adoption of new cable television rules by the Federal Communications Commission.

The delay of revision legislation was also preventing the extension of federal copyright protection to sound recordings. With the unauthorized duplication of sound recordings becoming widespread, the need for special remedial action became apparent. Accordingly, Senator McClellan introduced S. 646 at the outset of the 92d Congress to amend the existing copyright statute to provide for the creation of a limited copyright in sound recordings. Identical with S. 4592, which Mr. McClellan had introduced on December 18, 1970, this bill passed the Senate on April 29, 1971. Following hearings, a companion measure, H.R. 6927, passed the House of Representatives with amendments in early October and was enacted shortly thereafter as

Public Law 92-140. By the terms of the act, whose provisions were taken in substance from the general revision bill, statutory copyright protection was made available to sound recordings first fixed on or after February 15, 1972, if the sound recording was published with the prescribed notice of copyright.

On March 26, 1973, Senator McClellan introduced S. 1361 for the general revision of the copyright law. This bill was identical with its predecessor, S. 644, except for technical amendments. On May 29, 1973, Representative Bertram L. Podell of New York introduced H.R. 8186, an identical counterpart to the Senate bill. On July 31 and August 1, 1973, the Senate Subcommittee on Patents, Trademarks, and Copyrights held supplementary hearings on issues affected by current developments relating to library photocopying, general educational exemptions, the cable television royalty schedule, carriage of sporting events by cable television, and an exemption for recording religious music for broadcasts.

Shortly after the Supreme Court's decision of March 4, 1974, in *Teleprompter v. Columbia Broadcasting System, Inc.*, 415 U.S. 394, which extended copyright exemption to the importation of distant signal programming by cable antenna television systems, the Senate Judiciary Subcommittee resumed active consideration of the McClellan bill and on April 9, 1974, reported S. 1361 with some amendments to the full Judiciary Committee, which in turn made its favorable report on July 3, 1974, together with a 228-page printed report, Number 93-983.

The most controversial issues in the reported bill involved establishment of a royalty for the public performance of sound recordings and the carriage of broadcasts of sporting events on cable television. Principally because these issues were deemed to hold implications for communications policy, the copyright bill was then referred to the Senate Commerce Committee at its own request. On July 29 that committee also reported the bill with further amendments and a ninety-two page report, Number 93-1035.

Finally on September 9, 1974, by a vote of 70 to 1, the measure passed the Senate with additional amendments. The "performance royalty" for sound recordings and the "sports blackout" provisions were deleted before passage of the bill, whose basic purpose and structure remained unchanged. Although it was apparent that insufficient time remained for House action in the second session of

the 93d Congress, the flurry of activity coupled with the decisiveness of the Senate vote showed that the program for general revision of the copyright law had overcome the existing apathy and regained much of its legislative momentum.

However, three matters dealt with in the general revision bill were considered by Congress as too urgent to await final action on the omnibus legislation. The first of these involved making permanent the temporary federal copyright protection against unauthorized duplication of sound recordings fixed on or after February 15, 1972. The so-called "record piracy" law of 1971, Public Law 92-140, was scheduled to expire on December 31, 1974, unless extended in the meantime. The second and third matters, respectively concerned the status of subsisting copyrights in their renewal term which would otherwise expire at the end of 1974 and the establishment of a National Commission on New Technological Uses of Copyrighted Works. Since all three provisions were covered by the general revision bill, the Senate promptly passed S. 3976, an interim bill introduced by Senator McClellan on September 9, 1974.

On August 21, 1974, the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice had favorably reported a similar bill, H.R. 13364, which had been introduced by its chairman, Representative Kastenmeier. A favorable report was made on September 30 by the full House Judiciary Committee, accompanied by a printed report, Number 93-1389; thereafter, on October 7, 1974, the House of Representatives cleared the measure, under suspension of rules, by a two-thirds nonrecord vote. At the end of November, Mr. Kastenmeier's Judiciary Subcommittee held hearings on S. 3976, the only witness being the register of copyrights, who was asked to testify on the two issues on which the House was yet to take favorable action, namely, the extension of expiring renewal copyrights and the National Commission. The subcommittee's favorable report on December 10, 1974, was followed two days later by that of the full Committee, which also issued printed Report 93-1581. The bill passed the House by a vote of 292 to 101 on December 19, 1974, the last day of the 93d Congress, and was accepted later the same day by the Senate. On December 31, 1974, only a few hours before the record piracy legislation and some 150,000 renewal copyrights were scheduled to expire, the legislation was approved by President Ford and became Public

Law 93-573.

This last-minute legislative action not only helped regenerate the general revision program but also augured well for tangible progress during the next Congress. Thus, the two-year extension of copyrights in their renewal term was based on the assumption that an omnibus revision bill which would give a total term of seventy-five years to all subsisting copyrights could be enacted before the end of 1976. Establishment of a National Commission in advance of general revision, in order to study and gather information on the reproduction and use of copyrighted works by machine or in conjunction with automatic systems capable of storing, processing, retrieving, and transferring data, likewise showed congressional urgency concerning the unsettled copyright questions within the commission's purview.

Shortly after the convening of the 94th Congress, a new version of the revision bill that was substantially identical with S. 1361 as passed by the Senate the preceding September was introduced in both Houses by the respective chairmen of the concerned subcommittees. On January 15, 1975, Senator McClellan introduced S. 22, and on January 28, 1975, Mr. Kastenmeier introduced H.R. 2223 in the House of Representatives. Senate review of the bill by the Subcommittee on Patents, Trademarks, and Copyrights resulted, on April 13, 1975, in a favorable report to the full Senate Judiciary Committee with, however, a number of amendments, the most controversial of which was the restoration of provisions for periodic review of the royalty rate for jukebox performances.

In the House of Representatives, the first hearings on the revision bill since 1965 began before the Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice on May 7, 1975. Nearly one hundred witnesses appeared during the eighteen days of extensive hearings on H.R. 2223 before their conclusion on December 4, 1975. The resulting 2,240-page record of oral transcripts and written statements covered every important aspect of the proposed legislation, the bulk of whose provisions remained almost entirely unchanged since it passed the House in 1967. The basic features of Title I of the bill—such as the establishment of a single federal copyright system, duration of term based on the life of the author plus fifty years, ownership and transfer of rights, the subject matter of copyright, and the prescribed formalities—were left intact.

Title II of the bill consisted of what had originally been separate comprehensive legislation for the protection of ornamental designs of useful articles, based largely on copyright principles.

Originally introduced in 1957, the design protection measure received active consideration in both Houses during the succeeding decade. As separate legislation, it passed the Senate on three occasions—in 1962, 1963, and 1966. Reintroduced in the 90th and again in the 91st Congress, the Senate Judiciary Subcommittee on Patents, Trademarks, and Copyrights added it to the general copyright revision bill in late 1969, reporting it as Title III of S. 543. Twice thereafter, the design legislation passed the Senate, first as Title III of S. 1361 in the 93d Congress and then finally as Title II of S. 22 in the 94th Congress. Ultimately, the design legislation was deleted before congressional passage of the final conference version of the revision bill lest the unresolved issues it raised cause further delay in acceptance of basic copyright reform.

On November 20, 1975, while hearings in the House of Representatives on H.R. 2223 continued, the Senate Judiciary Committee favorably reported S. 22, accompanied by a 168-page printed report with additional views, Report 94-473. As reported above, soon after the beginning of the second session of the 94th Congress, on February 19, 1976, the Senate passed the bill unanimously by a vote of 97 to 0. Essentially the same as S. 1361, which the Senate had approved in 1974, the 1976 enactment embodied a new provision for the compulsory licensing by noncommercial educational broadcasts of certain works, at royalty fees established by the Copyright Royalty Tribunal. Also included was an amendment designed to ease the burden of copyright liability for smaller CATV systems with annual revenues under \$160,000. Except for a number of added provisions, including those relating to cable antenna television, the 1976 Senate version of the revision bill corresponded in its general features with the measure approved by the House of Representatives in 1967.

#### EARLIER HISTORY

The new statute is the fourth general revision of the U.S. copyright law. Although there have been numerous minor amendments since the enactment of the first federal copyright statute on May 31,

1790, the only earlier general revisions were those of 1831, 1870, and 1909.

The movement for general revision of the copyright law that culminated in the 1976 enactment of Public Law 94-553 owes its modern origin to the Legislative Appropriations Act of 1955, which allocated funds for a comprehensive program of research and study of copyright law revision by the Copyright Office of the Library of Congress. Between 1955 and 1963, a total of thirty-five studies prepared under the supervision of the Copyright Office examined the past, present, and future prospects of the existing law with a view to considering a general revision of the copyright statute. The first thirty-four of these studies were published as committee prints by the Senate Committee on the Judiciary's Subcommittee on Patents, Trademarks, and Copyright (86th Congress, Second Session).

Revival of interest at this time in copyright revision was undoubtedly stimulated in part by the successful efforts to procure U.S. adherence to the text of the Universal Copyright Convention adopted at Geneva, Switzerland, on September 6, 1952. One of the original thirty-six signatories, the United States was also numbered among the first twelve countries whose adherence, under the terms of the convention, ultimately brought it into force on September 16, 1955. On the same date the federal copyright law was modified to comply with the convention in accordance with the provisions of Public Law 743 (68 Stat. 1030) as approved by President Eisenhower on August 31, 1954. By its ratification, the United States had become for the first time a participant in a system of international copyright protection destined to achieve virtually worldwide adoption. It was the most important development of its kind since the Chace Act of 1891 first permitted establishment of copyright relations between the United States and foreign countries.

The series of revision studies sponsored by the Senate subcommittee provided the research and analytical basis for the 1961 *Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law*. This report, which contained detailed recommendations for an omnibus statute, in turn provided a focus for numerous meetings and discussions with a Panel of Consultants on General Revision, held during the following three years under the auspices of the Copyright Office. The

resulting suggestions and recommendations, representing the full spectrum of interests affected by the copyright law, enabled the Copyright Office to present a preliminary draft of provisions for a general revision bill in 1963, leading to discussions and comments on that draft. The outcome of all of this sustained effort was the copyright law revision bill of 1964, introduced in the second session of the 88th Congress on July 20, 1964, as H.R. 11947 in the House of Representatives and as S. 3008 in the Senate. Although no legislative action was taken on these measures, the Copyright Office undertook a complete redraft of the bill in the light of the comments received in the wake of its introduction. On February 4, 1965, at the outset of the 89th Congress, the revision movement established itself firmly with the introduction in both Houses of the new and completely revised bill known as H.R. 4347 in the House and S. 1006 in the Senate, which would serve as a basis for extensive hearings soon to begin.

None of the earlier efforts to effect any broad revision of the Copyright Act of 1909 had benefited from the sustained and thorough kind of preparation that augured so well for the revision movement that in 1965 stood at the threshold of a strenuous but ultimately triumphant decade of progress. Forty-five years earlier, in the aftermath of the First World War, there were stirrings among publishing and other copyright interests generated by the growing market for American works abroad which attracted attention to shortcomings in our international copyright relations and prompted a desire for adherence to the multilateral treaty arrangement known as the Berne Convention, to which most European countries as well as others of importance subscribed.

Adherence to the Berne Convention would have required many fundamental changes in the U.S. copyright law, a fact that prompted proponents to widen their objectives to cover other issues as well. The first of these broad revision programs was presented to the Congress in 1924. Although no legislative action was taken on this measure, it did give rise to further discussions under congressional auspices that resulted in the emergence of revised proposals, one of which, known as the Vestal bill, was passed by the House of Representatives in early 1931 but failed to come to a vote in the Senate. The near enactment of the Vestal bill in the 71st Congress marked the furthest reach of the efforts to

conform our law to the principles of the Berne Convention.

Nevertheless, the movement for revision continued in the same general direction until deflected by the reappearance in the 73d Congress of a movement to return to the narrower objective of the revision efforts initiated a decade earlier by limiting proposed changes only to those necessary for adherence to the convention. Meanwhile, the 1928 Rome Revision of the Berne Convention added features considered unacceptable by some segments of the American copyright community and no longer permitted adherence with reservations as previously allowed under the 1908 Berlin Revision of the Berne Convention.

The legislative effort continued but seemed to uncover new areas of controversy rather than to produce a consensus. In 1938 the Committee for the Study of Copyright, also called the Shotwell Committee (after its chairman, Prof. James T. Shotwell), arranged a series of conferences with a variety of interested copyright groups. A draft bill for complete revision of the law was prepared and introduced in the Senate of the 76th Congress in January 1940. However, no hearings were held on the so-called Shotwell bill, and no further legislative action was taken on it. After 1940, attempts to alter our law for membership in the Berne Union were abandoned. Following the Second World War, the United States participated actively in the development of the new Universal Copyright Convention, which was essentially consistent with the existing U.S. copyright law. The movement for general copyright revision lay dormant during the intervening years until its revival in 1955, when the new worldwide-convention came into force.

#### OTHER COPYRIGHT LEGISLATION

The copyright law was amended by the Legislative Branch Appropriation Act, 1978, Public Law 95-94 (91 Stat. 653, 676, 682), which was enacted on August 5, 1977. Title II of the act appropriates \$7,945,500 for necessary expenses of the Copyright Office but provides that not to exceed \$3,000,000 of the funds credited to this appropriation during fiscal year 1978 under section 203 of title 17, U.S. Code (as in effect prior to January 1, 1978), and under section 708(c) of such title (as in effect on or after January 1, 1978), shall also be available for

obligation during that fiscal year. Title IV of the act specifies that, effective October 1, 1977, section 203 of title 17, U.S. Code, is amended by adding at the end thereof the following statement: "All moneys deposited with the Secretary of the Treasury under this section shall be credited to the appropriation for necessary expenses of the Copyright Office." Title IV also specifies that:

Effective January 1, 1978, the first sentence of section 708(c) of title 17, United States Code, is amended to read as follows: "All fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriation for necessary expenses of the Copyright Office."

The net effect of this appropriation measure is to allow a reduction not to exceed \$3,000,000 in the 1978 budget, offset by an equal amount collected in Copyright Office fees and credited to the appropriation account for the Copyright Office. The combined total of budgetary appropriation and fee receipts amounts to \$10,945,500, an increase of \$1,176,200 over appropriations for 1977, including provision for seventy new positions requested to implement the revised copyright law that becomes fully effective January 1, 1978.

#### REVISION COORDINATING COMMITTEE

To prepare for the implementation of those provisions of the new law that are the responsibility of the Copyright Office, the register of copyrights appointed a Revision Coordinating Committee, made up of Copyright Office staff members. The committee consists of the register, Barbara Ringer, as chairperson, and two other members, Dorothy P. Keziah and Mary F. Lyle. A number of subcommittees were established under the committee, and various task groups were set up within the subcommittees. Staff members serve on the subcommittees along with their regular duties. The committee coordinates the revision efforts throughout the office, including such activities in the individual divisions and by the general counsel of the Copyright Office and his staff.

Products of the committee include policy decisions, notices of proposed rulemaking, final regulations, and other documents. Among the activities being conducted are:

- Development of a classification system for registrations under the new law.
- Design of new application forms.
- Preparation of new rules for the cataloging of copyright registrations and recordings.
- Study of storage and preservation problems raised by the new act.
- Preparations necessary to bring the Office under the Administrative Procedure Act, as provided by the new copyright law.
- Formulation of new operational manuals, information circulars, and similar materials.

Moreover, the Revision Coordinating Committee has concerned itself with a set of questions raised by the new law, regarding the relationship between the Copyright Office and the other parts of the Library of Congress. These problems arise from the new legal provisions on:

- Mandatory deposit of copies and phonorecords, including the concept of "best edition" and the relationship between deposit and registration.
- Establishment of procedures by which certain copyright owners can, at the time of registration, grant to the Library of Congress a license to reproduce the work for the use of the blind and physically handicapped.
- Establishment in the Library of Congress of the American Television and Radio Archives, which may consist in part of copyright deposits.

The importance of coordination with other departments of the Library was also given renewed emphasis by efforts to make copyright cataloging more compatible with Library of Congress procedures so as to facilitate increased use of copyright catalogs.

Of special importance is the training being done to inform both the Copyright Office staff and the public on the provisions of the new law. Courses have been offered to virtually all the employees of the Copyright Office, and considerable efforts have

been made to supply, on request, speakers from the Copyright Office to meetings of authors, publishers, lawyers, librarians, educators, and others concerned with the new law. Kits of printed matter on the new law have been sent out in great quantities. Those on the Copyright Office mailing list, now numbering almost 10,000, receive copies of all announcements and printed matter of general interest issued by the office.

#### **RULEMAKING AND RELATED ACTIVITIES**

The register of copyrights is required under the new law to establish regulations dealing with a variety of matters. Moreover, the new act calls for the register to consult with the representatives of certain interests on specified subjects and to submit a report to Congress setting forth recommendations as to whether the copyright law should be amended in those areas.

In the exercise of these functions the register of copyrights has issued, through the *Federal Register*, a number of notices of proposed rulemaking which invite comments from the public, has held several hearings, and has issued notices of adoption of regulations on certain subjects.

The subjects for which regulations have been adopted include notices of identity and signal carriage complement of cable systems under section 111(d) of the new law, the recordation of agreements between copyright owners and public broadcasting entities under section 118, and notices of termination of transfers and licenses covering the extended renewal term under section 304(c). In July 1977, hearings were held at the Copyright Office and in Beverly Hills, California, to elicit comments on whether or not the law should be amended to establish a performing right for copyrighted sound recordings, a matter on which the register is required, under section 114(d) of the new act, to make recommendations to Congress on January 3, 1978.

#### **REORGANIZATION**

In preparation for implementation of the new law on January 1, 1978, the organization of the entire Copyright Office has been reviewed and a number of substantial changes have been proposed to enable

the office to meet its added responsibilities in an effective manner. As there has been no major reorganization in the Copyright Office since the 1940s, when the office numbered some two hundred employees, it becomes even more urgent that basic restructuring take place as the office approaches a staff level of six hundred.

Organizational changes currently under way include elimination of the position of deputy register. Instead there will be two assistant registers. A new tier of management will thus be created to handle the Copyright Office's increased responsibilities.

The assistant register for registration will oversee the examining process and will also be responsible for coordinating certain activities performed in the workflow process, such as the in-process control and acquisition functions. The assistant register for automation and records will direct the cataloging functions, the management of official records, the new licensing activities, and the information and reference functions, as well as the activities of the Planning and Technical Office.

Two new divisions have also been created, and all of the other four divisions in the Copyright Office are being restructured. The expanded emphasis on records called for in the new law has resulted in the creation of a Records Management Division, which will plan and organize these record-keeping and archival functions. In so doing, this division will incorporate many of the activities previously handled by the Service Division and by the Microfilm Project in the Reference Division. The new division will have more than fifty employees and will be divided into a Preservation Section, a Records Storage Section, and a Card Catalog Section.

The other new administrative unit, the Licensing Division, has been created to handle the new law's provisions for licensing of jukeboxes and for receiving and recording documents relating to cable television. In addition to receiving payments from jukebox operators and cable television licensees, the new division will also handle documents related to other licensing provisions. The division is composed of an Examining and Processing Section and an Accounting and Records Section.

Plans have been completed for a fundamental reorganization of the Cataloging Division. Five sections, conforming to the new categories of material outlined in the legislation, will be created

from the present three, and a supervisory structure will be instituted to allow for smooth expansion to meet the increased workload expected in the years to come. The restructured division will include Literary, Serials, Performing Arts, Audiovisual, and Visual Arts Sections.

To bring its structure more nearly in line with the new registration classifications, the Examining Division is being reorganized into Literary, Performing Arts, Visual Arts, and Renewals and Documents Sections.

The Service Division has absorbed the Compliance Section from the Reference Division, and some of the record-keeping functions of the Service Division are being transferred to the Records Management Division. The compliance function is significantly expanded by the deposit provisions of the new law and, since registration is to be largely voluntary, will be oriented primarily toward the acquisitions requirements of other departments of the Library of Congress. The name of the division is being changed to the Acquisitions and Processing Division, and the Compliance Section will become the Deposit and Acquisitions Section. There have also been some minor organizational changes in the Materials Control Section: a Materials Expediting Unit has been separately designated, and a team structure has been adopted in the Mail Processing Unit to cope with the increasing volume of work.

The name of the Reference Division has been changed to Information and Reference Division. Passage of the new copyright law has greatly increased the need for highly trained information specialists who have the depth of knowledge necessary to explain the various facets of the old and new statutes. To meet this need and to centralize the printing and publications activities of the office, the Information and Publications Section in this division has been reorganized into three separate units: the Public Information Office, the Publications Unit, and a Clerical Support Unit.

These reorganization measures should greatly facilitate effective implementation of the new law. Plans call for their review in a few years, however, after the Copyright Office has had actual experience in dealing with various provisions of the new legislation and associated workload.

#### AUTOMATION

Significant progress was made during the year in the development and implementation of an automated

in-process and accounting system. It is planned that this system, called the Copyright Office In-process System (COINS), which was developed under the direction of the Copyright Office Planning and Technical Office, will eventually be used to record all material received in the Copyright Office relating to a fee service, track its path through the Office, provide an on-line search capability by the use of terminals, generate accounting reports and production statistics, and automatically call attention to problem cases held without action at specific work stations.

It has been decided to implement COINS in phases, using a pair of dedicated minicomputers, and a three- to five-year phased implementation plan has been prepared. The deposit account function was selected for automation as the first phase, since it is fairly independent and is only slightly affected by the new copyright law.

The minicomputers selected for this operation have arrived in the Copyright Office, and the Deposit Account Subsystem is operational for testing. Training of staff, begun off-site, was completed in the new computer room in the Copyright Office. Four cathode ray tube terminals have been installed, along with two printers for the production of hard copy reports. The terminals are hard wired directly to the computer, thus eliminating the need for telecommunications hardware and software. Added reliability results from the use of a dual computer system in which a development/test computer also serves as backup for the dedicated production machine.

Actual operation of COINS in parallel with the manual system is planned for early October 1977, as originally scheduled. This system represents the Library's first entry into dedicated minicomputer systems and distributed processing. It is believed that the system will be cost effective, reliable, and responsive to our needs.

#### SPECIAL AWARDS

On January 12, 1977, Barbara Ringer, the register of copyrights, was presented the President's Award for Distinguished Federal Civilian Service in a ceremony at the White House. This award, the highest honor for extraordinary achievement in the federal career service, cited the leading part taken by her in the movement to revise the copyright law and pointed out that her "energy, ability, and

concern for the property rights of those who create literature, the arts, and science have ensured continuation of that creativity, thus enhancing life for all people."

Ms. Ringer had already received from the Librarian of Congress, shortly after the revision bill was cleared for passage, the Distinguished Service Award, the highest award offered by the Library, in recognition of her contribution to the quest for modern copyright legislation.

#### STAFF

There were several key management appointments during the fiscal year. Richard E. Glasgow, former chief of the Examining Division, was appointed assistant general counsel of the Copyright Office. Anthony P. Harrison, former head of the Book Section in the Examining Division, was named chief of that division. Susan B. Aramayo, former educational liaison officer in the Office of the Assistant Librarian of Congress for Public Education, was appointed chief of the newly formed Licensing Division. And Waldo H. Moore, former chief of the Reference Division, was named assistant register of copyrights for registration.

#### COPYRIGHT ROYALTY TRIBUNAL

On September 26, 1977, President Carter announced the nomination, pursuant to the provisions of the new copyright law, of the commissioners of the Copyright Royalty Tribunal. They are, in the order of seniority designated by the President: Thomas C. Brennan, Douglas Coulter, Mary Lou Burg, Clarence L. James, Jr., and Frances Garcia.

#### PRODUCTION AND SERVICES

The volume of copyright activity increased in virtually all areas during the fiscal year. The number of registrations grew by 10 percent to a record total of 452,702; this figure is 31 percent above the level attained only five years ago. Renewals increased by 12 percent to 30,953 and accounted for 7 percent of total registrations. Gross receipts totaled some \$2,946,500, a 10-percent increase over fiscal 1976.

Fees earned for copyright services during the fiscal year amounted to almost \$2.8 million. A total of 173,892 separate remittances were scheduled, and some 2,460 others were withheld from deposit for various reasons and returned to the remitter.

Of the 504,592 applications for registration and documents for recordation handled in the Examining Division, 84 percent were acted on without correspondence. Rejections amounted to 2 percent, while the remaining 14 percent required correspondence which led to favorable action.

The most substantial increases occurred in the area of information services, reflecting the needs of the public for information and guidance concerning the new copyright law. Replies to written inquiries seeking general information numbered 47,235, an increase of almost 25 percent over fiscal 1976. Approximately the same percentage of increase occurred in the number of incoming telephone calls seeking information about copyright, the total being 66,000. The number of visitors to the Public Information Office was 5,526, a slight decrease. Owing largely to the upsurge in requests for application forms and information and to numerous revision-related mailings originated by the Copyright Office, the volume of incoming and outgoing mail processed by the Service Division increased by 26 percent to a record 1,278,420 pieces. Reference searches conducted by the Copyright Office staff for members of the public totaled 163,810 titles, an increase of 30 percent.

Copyright deposits continued to be an important source of acquisitions for the collections of the Library of Congress. Of the 712,527 articles deposited during fiscal 1977 (up 10 percent from the previous year), 418,245 were transferred to other departments of the Library. The transferred deposits consisted primarily of books and pamphlets (35 percent), periodicals (52 percent), and musical compositions (6 percent). The number of deposits received by the Copyright Office increased in all copyright classes except reproductions of works of art, which declined slightly.

Cataloging production kept pace with the increased workload of other areas of the Copyright Office. Copyright cataloging data provided to private subscribers increased by 28 percent to 447,785 cards and 51 computer tapes. The Copyright Card Catalog maintained in the Copyright Office grew by 1,465,420 cards during this fiscal year.

## INTERNATIONAL DEVELOPMENTS

A Recommendation on the Legal Protection of Translators and Translations and the Practical Means to Improve the Status of Translators was adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization (Unesco) at Nairobi in November 1976. The recommendation sets forth the basic legal principle that translators, in respect of their translations, should be accorded the same protection as authors under the provisions of the international copyright conventions and under national laws, without prejudice to the rights of the authors of the original works translated. The application in practice of the legal protection afforded translators, the social and economic situation of translators, and their training and working conditions are also covered by the recommendation. In accordance with the Unesco Constitution, the U.S. government is to submit a report to the Unesco General Conference in 1978 on steps taken to bring this instrument to the attention of interested parties.

A Second Committee of Government Experts on the Double Taxation of Copyright Royalties Remitted from One Country to Another was convened jointly by the directors general of Unesco and the World Intellectual Property Organization (WIPO) at Paris from December 8 to 16, 1976. The United States was represented at the committee meeting by Marcia Field (delegate), Department of the Treasury; Steven Pruett (alternate delegate), Department of State; and Patrice Lyons (adviser), Copyright Office. The committee reviewed the preliminary draft text of a multilateral convention on this subject prepared by its secretariat and also considered, at the suggestion of the U.S. delegation, the possibility of working out a model bilateral agreement designed to obviate such double taxation. At the close of its work, the committee adopted a resolution noting that the solution of the problems in question may be found in the adoption of a multilateral instrument restricted to general principles and accompanied for its implementation by a model bilateral agreement, and it recommended that the secretariats of Unesco and WIPO prepare such instruments together with a commentary. A Third Committee of Governmental Experts is scheduled to meet in July 1978 to give final consideration to these texts.

At their meetings in December 1975, the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union, after discussing the study prepared by Prof. Franca Klaver entitled "The Legal Problems of Videocassettes and Audiovisual Discs," had decided that their secretariats should invite states party to the Berne Convention and Universal Copyright Convention, as well as interested international organizations, to comment on the Klaver study. The Copyright Office prepared a report on U.S. copyright legislation in this area that was submitted to Unesco in early 1977. The committees also decided that a working group of specialists invited by the directors general of Unesco and WIPO should meet in early 1977 to analyze the legal problems arising from the use of videocassettes and audiovisual discs. A working group on this subject met at Geneva from February 21 to 25, 1977. Robert D. Hadl, a lawyer in private practice in Washington, D.C., was invited in a personal capacity to participate in this group. After examining the various issues raised, the working group concluded that the international copyright conventions were adequate with regard to this new use of protected works but that the national legislations should be amended to deal more specifically with this problem.

Although the United States is not a party to the Berne Convention on the Protection of Literary and Artistic Works, it was invited to become a member of the WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights. The Copyright Office was consulted in the preparation of the U.S. positions for the permanent committee's first session, held at Geneva from March 17 to 21, 1977. The United States was represented at the meeting by Harvey J. Winter and Edward J. Chesky of the Department of State.

The fourth session of the WIPO Advisory Group of Non-Government Experts on the Protection of Computer Programs was convened by the director general of WIPO at Geneva from June 1 to 3, 1977. Representing the United States as observers were Waldo H. Moore, assistant register of copyrights for registration; Arthur J. Levine, executive director of the National Commission on New Technological Uses of Copyrighted Works (CONTU); and Prof. Arthur R. Miller, a CONTU commissioner. The main work of the fourth session was the adjustment and

refinement of the language of the draft model law prepared by the WIPO International Bureau on the basis of substantive decisions taken by the third session of the committee.

The United States was represented at another meeting that dealt with computer-related problems. Michael S. Keplinger, assistant executive director and senior attorney of CONTU, attended the Conference on Transborder Data Flows and the Protection of Privacy, which met at Vienna, September 20 to 23, 1977, under the auspices of the Organization for Economic Cooperation and Development.

The register of copyrights, Barbara Ringer, was elected to chair a Working Group on the Problems in the Field of Copyright and So-called Neighboring Rights Raised by the Distribution of Television Programmes by Cable, held at Paris from June 13 to 17, 1977. The working group was composed of specialists invited in a private capacity by the directors general of Unesco and WIPO. The documentation available to the working group consisted of comments on the problems involved, which had been received from states party to the Universal Copyright Convention or the Berne Convention and from international nongovernmental organizations, together with an analysis of the comments prepared by the secretariats of Unesco and WIPO. The working group examined three distinct situations: the distribution by cable of the cable distributor's own programs, the distribution by cable of broadcast programs retransmitted by the original broadcasting organization, and the distribution by cable of broadcast programs by an organization other than the original broadcasting organization. The working group also considered possible methods of regulation as well as the interrelationships between radio communications regulations and intellectual property rights. The discussions of the group revealed the necessity and usefulness of identifying the problems in this area.

Patrice Lyons represented the Copyright Office at the First Continental Conference on Copyright, sponsored by the Inter-American Copyright Institute with the assistance of WIPO, and the First Brazilian Congress on Copyright, held at the Faculdade de Direito of the University of São Paulo, Brazil, from June 5 to 10, 1977. Ms. Lyons was asked to chair the panel discussion on reprography and to give a talk to the conference on that subject. After the meeting in São Paulo, she went to Rio de Janeiro to

discuss with interested persons the Brazilian law on public performance rights in sound recordings and the system adopted in Brazil for the collection and distribution of the royalties relating to such rights.

During the month of August 1977, Harriet Oler and Charlotte Bostick of the Copyright Office traveled extensively in Europe to collect information on European law and practice in relation to performing rights in sound recordings. This material will assist in the preparation of the report that the register of copyrights is directed by section 114(d) of the new U.S. copyright law to submit to Congress on January 3, 1978. Section 114(d) of the new law states specifically that the report of the register should describe the status of performance rights in sound recordings "in foreign countries, the views of major interested parties, and specific legislative or other recommendations, if any."

#### JUDICIAL DEVELOPMENTS

There were a number of important court decisions on copyright and related subjects during the year, some of which have particular significance in connection with the new copyright law.

##### Common Law Copyright, Unfair Competition, and Related Doctrines

One of the most significant changes wrought by the new law is the establishment of a uniform federal system of copyright, applicable to all published and unpublished works alike. In drawing a jurisdictional line between federally preempted copyright protection and common law doctrines not equivalent to copyright, the new law has focused the attention of the legal profession more sharply than ever upon those stepchildren of copyright: unfair competition, privacy, misappropriation, and common law trademark protection. In keeping with the challenge of settling the new boundaries between federal and state power, this year saw several fascinating decisions in the field of common law copyright and related rights.

In *Bicentennial Commission v. The Olde Bradford Co., Inc.*, 365 A2d 172 (Comm. Ct. of Pa., Oct. 22, 1976), the Bicentennial Commission of Pennsylvania adopted an official seal and registered it as an emblem and service mark under applicable state laws. The commission licensed a private

company to reproduce the seal on metalware, to be sold as souvenirs; and, when the defendant reproduced the seal on items similar or identical to those manufactured by its licensee, the commission sued. It alleged that the unauthorized reproduction of its seal violated four relevant statutes: that relating to the protection of "emblems," the state statute creating the Bicentennial Commission, the state's trade and service mark law, and the Pennsylvania Unfair Trade Practices and Consumer Protection Law. For our purposes, only the count alleging violation of the Bicentennial Act is of importance. That statute, purporting to prohibit the unauthorized reproduction of the commission's marks, was construed as having both elements of unfair competition and copyright, but upon close examination the court was unable to find the statutory aim of preventing public confusion over the nature or origin of goods characteristic of unfair competition laws. In sum, the court did not find any

statement in the act which specifies the parties to be protected or the type of confusion to be avoided. It appears clear, therefore, that the dominant intent of the act is to prohibit, as does federal copyright law, the mere unauthorized production of the Commission's marks. As such, the state law should be pre-empted.

Against the commission's argument that *Sears and Compco (Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 [1964], and *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234 [1964]), have been "substantially weakened, if not overruled" by *Goldstein v. California* (412 U.S. 546 [1973]), the court noted that, unlike the case of sound recordings fixed before February 15, 1972, section 5(g) and (h) of title 17 U.S.C. has consistently protected "works of art" such as the seal of the Bicentennial Commission.

Statutory copyright has never been the source of protection for the mere titles of otherwise copyrightable works. Two cases decided this year demonstrate the extent to which protection for titles is available at common law.

In *Kirkland v. National Broadcasting Co.*, 425 F. Supp. 1111 (E.D. Pa., Dec. 17, 1976), the creator of "Land of the Lost," a highly successful radio program between 1943 and 1948, sued for unfair competition arising out of the defendant's use of the identical title in a television series almost twenty years after the plaintiff's radio show went off the air. Both shows, although quite different in

continuing plot and theme, were directed toward children. In granting the defendant's motion for summary judgment, the court noted that, while statutory copyright does not protect titles, unfair competition will, if two essential elements exist: (1) that the title in question has acquired a "secondary meaning" in the minds of the public (that is, the title is so clearly identified with its source that supply from another source is clearly calculated to deceive the public and lead it to purchase the goods of one for that of another); and (2) that there is a likelihood of public confusion as to the source of the work. Noting the number of years which had elapsed since the last commercial use of the title by plaintiff, the court concluded that, even assuming the existence of a secondary meaning in the heyday of radio, such meaning had long since been lost. Similarly, the court saw little likelihood of public confusion: those old enough to remember the plaintiff's radio show would not be a part of the audience to which the children's show of the defendant was directed. Going somewhat beyond this holding, however, the court also stated that the extended nonuse of the title, despite plaintiff's desire to exploit her original concept under that title, worked an abandonment of her rights in the title "Land of the Lost."

In *Allied Artists Pictures Corp. v. Friedman*, 137 Cal. Rptr. 94 (Cal. App. Ct., Mar. 15, 1977), the scene shifts from children's programming to decidedly adult fare. Plaintiff, holder of exclusive U.S. distribution rights to the critically successful French film *The Story of O*, sought to enjoin defendant's distribution of a low-budget U.S. film entitled *The Journey of O*. The trial court in *Allied Artists* agreed with plaintiff's argument that the title had acquired a secondary meaning owing to the notoriety of the book *The Story of O*, upon which the French film was literally based and to which the U.S. film only generally related. The trial court found the two "confusingly similar" and issued an injunction requiring defendant to include a disclaimer in its advertisements and trailers. In addition to defendant's appeal, plaintiff cross-appealed alleging that the lower court's refusal to extend the injunction to activities outside California was in error. The appellate court declined to disturb the lower court's finding of secondary meaning, noting that it was unimportant that such a meaning resulted from the activities of others than plaintiff—in this case, the publishers of the literary work. The

court did, however, conclude that the injunction could be made applicable to out-of-state activities of the defendant.

Just as statutory copyright has not protected titles, however unique or valuable, the federal law has similarly denied protection to "characters" and "performances," at least to the extent that they are not embodied in copyrighted works. Among the more interesting and volatile areas of the common law, "character protection" and the related rights of privacy and publicity were the subject of two important cases, *Lugosi v. Universal Pictures*, 139 Cal. Rptr. 35 (Cal. Ct. App., June 9, 1977), and *Zacchini v. Scripps Howard Broadcasting Co.*, 45 U.S.L.W. 4954 (June 28, 1977).

*Lugosi*, as might be expected, involved the extent to which the film company which produced and distributed the classic *Dracula* could exploit the likeness of the film's star as Count Dracula without infringing upon rights which Bela Lugosi may have had in his own likeness. Further complicating the issue was the fact that the interest in Bela Lugosi's likeness was being asserted by the deceased actor's widow and son. Although Universal's contract with Lugosi included standard clauses retaining rights to the reproduction and exploitation of his "acts, poses and appearances of any and all kinds," these rights were generally limited to use in connection with the film and its publicity. Lugosi's heirs asserted that merchandising agreements subsequently entered into by Universal exceeded the terms of the original employment contract and infringed upon rights Lugosi had in his likeness. The trial court agreed with the plaintiffs, observing that the defendant's exploitation of *Dracula* was, in fact, "selling the likeness of Bela Lugosi in the role of Count Dracula." The court held that Lugosi had a protectible property or proprietary right in his facial characteristics and the individual manner of his likeness and appearance as Count Dracula. Further, the trial court held that this interest did not terminate with Lugosi's death and that his heirs could assert it under the actor's will. On appeal, the court disagreed and reversed. The court of appeals did agree that the common law of privacy would have allowed Lugosi to create a valuable interest in his name, likeness, or both, but that he had not done so during his lifetime. Without the association of likeness with a product or service, no secondary meaning could have been created during his lifetime which unfair competition law protects. After death,

however, whatever ability Lugosi might have had to exploit his likeness was held to have terminated, his name and facial characteristics falling into the public domain. The court's holding was narrowly drawn:

We are not prepared to say, however, that respondents or any person other than Universal could have attempted to build a business with a secondary meaning, which business exploited the name Lugosi, and coupled *Lugosi's name* with that of *Dracula*. That question is not before us.

The court of appeals distinguished the case at hand from earlier holdings recognizing that "property" interests in name and likeness are transmissible by will on the grounds that this has been recognized only where assignments of the right to use a likeness had been made *during* the lifetime of the actor/creator.

*Zacchini v. Scripps Howard Broadcasting Co.*, involved the unauthorized filming of Hugo Zacchini's "Human Cannonball" act, at a fair, by a local television station. Zacchini's fifteen-second performance was shown in its entirety on the evening news, with favorable comments, including the urging of viewers to see it "live." Zacchini sued in state court for unlawful appropriation of his professional property. Following the trial court's grant of summary judgment against Zacchini, the Appellate Court of Ohio reversed, stating that the unauthorized filming of the performance constituted common law copyright infringement. The Supreme Court of Ohio agreed that the unauthorized appropriation of Zacchini's likeness or name by another for the latter's commercial benefit would be an actionable misappropriation of "Zacchini's right to the publicity value of his performance." In the absence of a privilege, therefore, the defendant would be liable. The court ruled against Zacchini, however, because it found such a privilege to exist:

[A] TV station has a privilege to report in its newscasts matters of legitimate public interest which otherwise would be protected by an individual's right of publicity, unless the actual intent of the TV station was to appropriate the benefit of the publicity for some non-privileged private use, or unless the actual intent was to injure the individual.

The U.S. Supreme Court granted certiorari to consider "whether the First and Fourteenth Amendments immunized respondent from damages for its alleged infringement of petitioner's state law 'right

of publicity.'” Examining its earlier cases which have considered the relationship between the right of privacy and the constitutional sources of freedom of the press, the Supreme Court noted that *Time, Inc. v. Hill*, 385 U.S. 374 (1967), did not necessarily control because it was ultimately concerned with the protection of *reputation* through recognition of a right to *privacy*. In *Zacchini*, the issue was protection of a proprietary interest in order to encourage creative entertainment in the fashion contemplated by Article 1, Section 8 of the U.S. Constitution. The television news report, by reproducing Zacchini’s *entire* performance, posed an obvious “substantial threat to the economic value of that performance.” The majority observed:

There is no doubt that entertainment, as well as news, enjoys First Amendment protection. It is also true that entertainment itself can be important news. . . . But it is important to note that neither the public nor respondent will be deprived of the benefit of petitioner’s performance as long as his commercial stake in his act is appropriately recognized.

In dissent, Mr. Justice Powell argued that the Court’s opinion was not sufficiently sensitive to the First Amendment values at stake. Characterizing respondent’s activities as no more than normal reporting for a visual medium of communication and as only a brief part of the regularly scheduled news, Justice Powell saw “disturbing implications, for the decision could lead to a degree of media self-censorship.” Concern over possibly filming an entire protectible work or performance might, he added, inhibit effective reporting and force television to “watered-down verbal reporting.” For Justice Powell the issue turned not on how much was taken, but for what use—commercial exploitation or news?

Mr. Justice Stevens, in a separate dissent, questioned the majority’s reading of the Ohio Supreme Court decision as resting on federal constitutional grounds. Justice Stevens would have remanded the case for clarification of the holding which, he suggested, could have been doing no more than setting out the limits of a common law tort.

*Bonner v. Westbound Records, Inc.*, 364 NE 2d 570 (App. Ct. Ill., 1st Div., June 8, 1977), saw a singing group allege that defendant, their former recording and publishing company, took studio tapes of the group’s unedited and unfinished performances, wrote new music and words for those songs which were incomplete, overdubbed with

other musicians, and released the resulting albums as the group’s work. The plaintiffs asserted that these acts constituted violations of the deceptive trade practices legislation of Illinois, in that the works distributed by the defendants were either older, previously released songs advertised as new or were incomplete takes finished by unknown musicians and sold as creations of the plaintiffs. The defendants asserted that the recording and distribution contract under which the parties had worked gave the defendants the right to “couple” plaintiffs’ performances with those of “others,” and that the acts taken to complete the studio tapes were within their contractual rights. The court rejected the defendants’ contract defense, concluding that the contractual right to couple plaintiffs’ performances with those of others extended not to “overdubbing” plaintiffs’ songs but only to putting plaintiffs’ songs on the same disc with songs of other artists. This narrow interpretation of the contract was justified in the court’s view, because contracts for the sale of literary properties are not to be read as granting rights to make material alterations unless such rights were either expressly granted or “plainly implied” from the contract. This standard of contractual interpretation approaches a recognition of what has been called the “moral right.” The court, however, disclaimed any intention to rest its decision on the doctrine of the moral right.

The decision in *Universal City Studios v. Sony Corp. of America*, 429 F. Supp. 407 (C.D. Calif., Mar. 28, 1977), sharpened the issues in a litigation which has attracted substantial public attention. Plaintiff, a motion picture copyright proprietor, sued the Sony Corporation for copyright infringement, tortious interference with contractual relations, and unfair competition through merchandizing of the “Betamax” home video recording device. The defendant moved to dismiss the counts in the complaint, alleging violations of section 43(a) of the Lanham Act [15 USC, section 1125(a)]. Plaintiff based allegations of a Lanham Act violation on the defendant’s failure to advise the public that use of the Betamax to copy copyrighted programs off the air is copyright infringement, which “has caused the public to be confused and misled into believing that copying . . . is done with the permission of copyright owners and that it is otherwise legal.” The court agreed with the defendant’s contention that the conduct alleged to violate section 43(a) is, in fact, not actionable under the Lanham Act. The court found it difficult to “credit

as reasonable the inference plaintiff's claim is implicit in defendant's advertisements. To say that 'This product is capable of copying television shows' is simply not the same as saying 'When you use this product to copy television shows you are acting legally.' The court did not pass on the question of whether defendant's actions constituted unfair competition, holding only that the thrust of section 43(a) violation was a *false designation* and that "it is hard to see how a simple failure to disclose can be brought within its terms."

#### Publication and Notice of Copyright

The cases considered in this section touch on issues which have traditionally been troublesome under the 1909 statute. The relatively rigid requirement for notice of copyright on all published copies of a work in which copyright is claimed has made both the elements of a good copyright notice and the definition of "publication" particularly important.

In *Mitchell Bros. Film Group v. Cinema Adult Theatre*, C.A. No. 3-74-645-D (U.S.D.C. No. D., Texas, Sept. 2, 1976), the defendant claimed that a 1972 exhibition of the film in question constituted a general publication without notice, throwing the work into the public domain. Looking at the circumstances of the exhibition, the court concluded that there was no general publication in view of three significant factors: (1) the proven intent of the exhibition was to gauge audience reaction before full theatrical release; (2) the print used was a "first answer print," not commonly used for general trade release; and (3) a copyright statement on the film, while not a proper notice, evidenced the restricted or limited purpose of the exhibition. As a result, it was held that absence of a copyright notice was not fatal to the claim of copyright.

The long and complex history of the distribution of the prose poem "Desiderata" by Max Ehrmann was alleged to amount to a general publication without notice in *Bell v. Combined Registry Co.*, 536 F.2d. 164 (7th Cir., May 14, 1976; *reh. den.*, July 15, 1976). The loss of copyright was not, however, alleged to arise out of the *first* publication of the work. In 1927, Ehrmann "obtained a federal copyright" in his poem "Desiderata." He later reproduced the work on his personal Christmas cards and no evidence was adduced as to whether a copyright notice appeared on those cards. Between

1942 and 1944, Ehrmann corresponded with Merrill Moore, an Army psychiatrist, who distributed copies of the poem to his patients with the consent of the author. Dr. Moore's distribution of the poem extended to his private practice as well. Following Ehrmann's death, the poem was reprinted without a copyright notice, and a clergyman testified that he distributed "many copies" without the required notice. The trial judge concluded that Ehrmann had consented to distribution of his poem without notice and by so doing worked a "forfeiture and abandonment of his copyright protection in the work." On appeal, the court found that the distribution of the work on Christmas cards was not a general publication and, further, even though the clergyman in the case had distributed many copies of the work, it was not done under Ehrmann's authority. The court did hold, however, that the correspondence between Ehrmann and Dr. Moore supplied direct, credible evidence "of a general publication authorized by the copyright proprietor." The court questioned the trial judge's conclusion that the copyright had been "abandoned," the facts not necessarily warranting a reasonable conclusion that Ehrmann, when *authorizing* the distributions by Dr. Moore, actually *intended* to abandon his copyright. But the appellate court concluded by affirming the judgment of the lower court on the ground that forfeiture had occurred by authorized publication of copies without the correct notice on them.

In *Ed Brawley, Inc. v. Gaffney*, 192 USPQ 593 (N.D. Cal., Aug. 16, 1976), plaintiff's book on scuba diving training was published with a proper copyright notice. In the course of this infringement action, however, it became apparent that the copyrighted work was drawn from lectures prepared and delivered by the plaintiff many years earlier, as the teaching concepts embodied in the book were being developed. Plaintiff's lectures were reduced to notes by a student (and later, colleague), but were neither copied nor, initially, given to other instructors working with the plaintiff. In 1967, ten copies of the notes were given to other instructors being trained under the plaintiff, the intention being that the instructors deliver their lessons verbatim from the "notes." After each lecture session, the notes were returned to the plaintiff. In addition, copies of the notes were given to the students by the plaintiff, with the caution that they not be given to anyone else or copied. The court concluded, in relevant part, that the distribution to students was a limited

publication that did not work a forfeiture of copyright. Similarly, it was held that the distribution to instructors was not a general publication.

Determining if and when architectural works are "published" is occasionally awkward, as *Masterson v. McCroskie*, 556 P2d 1231 (Colo. Ct. App., Sept. 9, 1976), demonstrates. In *Masterson*, a suit was brought for the infringement of common law copyright in architectural plans. Plaintiff, with an architect, drew up plans for a dwelling and submitted copies to the owner of the plaintiff's development and to the local building department (as required by law). In the course of constructing the home, copies of plans were routinely given to contractors and subcontractors. None of these copies bore a copyright notice and not all the copies were returned to plaintiff after the construction was completed. Defendant built his home based upon a copy of plaintiff's plans, obtained from a subcontractor who worked on the original home. The lower court had concluded that copyright in the plans was lost by a general publication without notice and plaintiff appealed.

In sustaining the holding of the trial court, the Colorado Court of Appeals held that, while the filing of plans with the building department and submission of plans to the developer were both limited publications,

where as here there is no statutory copyright, constructing the house according to the plans and thereby incorporating the design into the structure, in plain view of the general public, constituted a general publication, at least as to the exterior plans.

In *Lopez v. Electrical Rebuilders, Inc.*, 416 F. Supp. 1133 (C.D. Cal., July 22, 1976), plaintiff published auto supply catalogs which incorporated a unique coding system. The defendant was allowed by plaintiff to copy from the 1973 catalog for one time only; subsequently, the defendant reproduced an additional catalog using the plaintiff's coding numbers. The defendant argued that the work, insofar as it embodied the coding numbers, was in the public domain because it was reproduced without copyright notices on some of plaintiff's catalogs and because of its general trade acceptance in the business documents of third parties. The court found that eleven of the forty catalogs published by the plaintiff since 1948 failed to carry a copyright notice, and that plaintiff knew that companies selling products described in the catalog

were using the plaintiff's code numbers on their printed price lists and stock labels, all without necessary copyright notices. The court rejected plaintiff's argument that the savings provision in section 21 of the 1909 copyright statute applied. Instead, the court read that section as excusing only omissions of notice on a small number of goods or copies, not on entire issues. The holding of forfeiture was found in plaintiff's longstanding consent to third-party industrial uses of the code numbers in question, without notice of copyright, characterized by the court as an abandonment of the copyright.

In *Rosette v. Rainbo Record Mfg. Corp.*, 546 F2d 461 (2d Cir., Nov. 11, 1976), the Second Circuit affirmed Judge Gurfein's 1973 decision that the distribution of phonorecords before statutory copyright was secured in the musical works recorded did not work a divestitive publication of the composition, but limited recovery to damages flowing from infringement of statutory copyrights.

In a brief opinion, the court in *Ayers v. Cadence Industries*, 193 USPQ 244 (NY Sup. Ct., June 15, 1976), held that, where plaintiff who did not avail himself of the federal copyright law transferred drawings for publication to the defendant who published them without copyright notice, the reproduction rights of plaintiff under §219(g) of the New York General Business Law, which provides that the artist who transfers a work of art retains the right of reproduction until it passes into the public domain, were lost and that the works were in the public domain.

#### Registration

*Imperial Toy Corp. v. Ringer* (U.S.D.C., C.D. Cal., July 15, 1977) was a mandamus action brought against the register of copyrights to compel registration of a commercial print manufactured in Hong Kong for plaintiff, a U.S. corporation. Registration was denied because the work was produced by a lithographic or photoengraving process outside the United States, in contravention of the manufacturing clause of the 1909 copyright statute. The court refused to compel registration, agreeing that the manufacturing clause extended to commercial prints and labels, and noting that the register has the authority to establish rules and regulations governing registration and cannot be compelled to register a work not entitled to registration under the copyright statute.

Registration has traditionally been a necessary prerequisite to the bringing of an infringement suit under the federal copyright statute. In *Frederick Fell Publishers, Inc., v. Lorayne*, 422 F. Supp. 808 (S.D.N.Y., Sept. 27, 1976), the plaintiff apparently forgot to allege compliance with the registration and deposit requirements of the copyright statute in the complaint. The court noted, "[A]lthough a mere technicality under the circumstances, such recitation is jurisdictionally required. The motion to dismiss is therefore granted without prejudice to plaintiff's filing of an amended complaint."

In three infringement actions, courts had occasion to refer to the section of the 1909 copyright statute which provides that the certificate of registration shall be "prima facie evidence of the facts stated therein." Each court rephrased this single statement in the course of citing the section in question. In *Reuben H. Donnelley Corp. v. Guides to Multinational Business, Inc.*, 193 USPQ 791 (N.D. Ill., July 1, 1976), the court held the certificate to be prima facie evidence of the facts therein and of the validity of the copyright. In *Urantia Foundation v. King*, 194 USPQ 171 (C.D. Cal., Mar. 21, 1977), the court accepted the certificate as prima facie evidence of originality, ownership, and copyrightability; and in *Nik-Nik Industries v. Walt Disney Productions*, 76 Civ. 2634 (U.S.D.C., S.D.N.Y., July 12, 1976), the court accorded the certificate prima facie evidence of "proper registration," the facts in the certificate, and the validity of the copyright.

In *Mitchell Bros. Film Group v. Cinema Adult Theatre*, discussed earlier, the film *Behind the Green Door* was registered as a "motion picture other than a photoplay." Defendant's argument that the film was dramatic in nature and erroneously classified, thus making the registration defective, was rejected out of hand. The court noted that there was no showing that the characterization of the film as nondramatic was an intentional misrepresentation amounting to a "fraud" on the Copyright Office. In any event, the court pointed out, section 5 of the copyright act establishes the rule that errors in classification do not impair the copyright in a work.

#### Subject Matter of Copyright and Scope of Protection

Two cases raised the hotly debated question of the copyrightability of works which are found to be

obscene. *Mitchell Bros. Film Group v. Cinema Adult Theatre* has been considered earlier in connection with other issues in the litigation. In this action for copyright infringement of the film *Behind the Green Door*, the principal defense was that the work was obscene and the "court should not . . . enforce the copyright protection to which the movie would normally be entitled." The court, reading *Mazer v. Stein*, 347 U.S. 201 (1954), and *Baker v. Selden*, 101 U.S. 99 (1880), stressed that the purpose of copyright was the "promotion of the sciences" and that works failing to do so would not be entitled to copyright protection. Turning to the cases dealing with copyright in obscene works, the court summarized them as being "few in number and not of very recent vintage," but said that "the courts have uniformly recognized that an obscene work will not be afforded copyright protection by the courts." The principle which produces this doctrine was, the court stated, that "a court of equity will not lend its support to one with unclean hands and for purposes that are contrary to the public interest." The court then considered what standards should govern the inquiry into alleged obscenity. Noting that both the copyright act and the First Amendment are national in their reach, the court concluded that the standard for determining obscenity in a copyright context should be that devised by the Supreme Court under the First Amendment. Applying the rules of *Memoirs v. Massachusetts*, 383 U.S. 413 (1966), and *Roth v. United States*, 354 U.S. 476 (1957), the court held that *Behind the Green Door* was obscene and found in favor of the defendant.

The holding in *Mitchell* was considered in *Argos Films v. Barry International Properties*, 2 Med. L. Rptr. 2179 (S.D.N.Y., July 7, 1977), where the defendant, in an action involving breach of contract and copyright infringement (by unauthorized performance), contended that the work *In the Realm of the Senses* could not be protected by copyright because it was obscene. The court, while distressed by the ironies of recognizing the obscenity defense as between two parties seeking to publicly exploit the work, concluded that the principle in *Mitchell* is in accord with the principles underlying the copyright act and embodied in Article 1, Section 8 of the U.S. Constitution. Upon a screening of the work, coupled with the expert testimony of critics, evidence of critical acclaim here and abroad, and the nonintervention of local law enforcement, the court concluded that the defendant failed to establish that the work was obscene.

The scope of copyright protection in fabric designs—"bias plaid" upholstery—was the subject at issue in *Novelty Textile Mills, Inc. v. Joan Fabrics Corp.*, 194 USPQ 347 (2d Cir., July 12, 1977). In that case, the defendant reproduced the black and white pattern of plaintiff's original plaid design, but only in certain color combinations so different as to make the appearance of the two works significantly dissimilar. Plaintiff argued that if one of the defendant's designs infringed plaintiff's copyright, then all of the defendant's other designs—despite sharp dissimilarities in superficial appearance owing to the color combinations—should be deemed infringing. The court, having remanded the case on other grounds, directed the trial court to determine "precisely what was granted registration as a work of art to determine whether color was an ingredient of the copyright granted." In a sharp dissent, Judge Mansfield disagreed with the decision to remand the issue of whether the copyright claimed extended to the colors impressed upon the plaid design. To Judge Mansfield, color was clearly one of the elements of the copyrighted design; as a consequence, plaintiff's copyright would be infringed only by fabrics similar in color. The question of whether another manufacturer could avoid infringement of a design pattern by changing the color scheme would depend, Mansfield observed, on "how important the color scheme was in the overall effect or impression of the design."

*Schroeder v. William Morrow and Co.*, 421 F. Supp. 372 (N.D. Ill., Sept. 21, 1976), explored the problem of copyrightability and scope of protection available to factual compilations. In that case, plaintiff asserted that his catalog of gardening supplies and information was infringed by defendant's gardening catalog. The allegedly infringed work listed suppliers, equipment, associations for gardening enthusiasts, some brief original descriptions, and an index. Defendant's catalog was similar in format, and the court found it to be based upon original research and reliance on other catalogs and booklets, including plaintiff's. The court noted that defendant, while admittedly relying upon plaintiff's catalog, took only the names and addresses of plant, seed, and equipment suppliers; the original descriptions were not copied. The court observed that copyright in a compilation protected the entirety of the work but does not extend to protection of public domain information in the work. Although validly copyrighted,

insofar as the lists of names . . . are concerned, that degree of originality and independent effort which would serve to render them protected parts of the entire compilation are not present.

Copyright in factual compilations, the court stressed, does not extend to names in compendia but is limited to "the literary context within which the name is used."

In *Russell v. Trimfit, Inc.*, 428 F. Supp. 91 (E.D. Pa., Feb. 15, 1977), the question was whether or not plaintiff's copyrighted drawings of distinctive legwear ("mitten toe socks" and "glove socks") were infringed by defendant's manufacture and distribution of legwear which utilized the basic concept of plaintiff's design: socks with compartments for the toes. Judge Broderick, in granting defendant's motion for summary judgment, noted that copyright protects only the expression of ideas but not the concepts themselves and concluded that plaintiff was actually seeking a degree of legal exclusivity for her creation obtainable only under patent law. Additionally, the court applied the rule of *Jack Adelman, Inc. v. Sonner's & Gordon, Inc.*, 112 F. Supp. 187 (S.D.N.Y. 1934), to the effect that copyright protection in a drawing of a design for clothing extends only to the drawing as a work of art and does not confer a monopoly upon the production of the article represented.

The distinction between copyrightable expression and noncopyrightable ideas or concepts was examined in a literary context in *Musto v. Meyer*, 2 Med. L. Rptr. 2222 (S.D.N.Y., June 24, 1977). There, the plaintiff was the author of an article on the use of cocaine in nineteenth-century Europe and America. As a part of the article, plaintiff included a "tongue-in-cheek" speculation on two famous users of the drug: Sigmund Freud and Sherlock Holmes. He concluded that Holmes's arch-nemesis, Professor Moriarty, was actually a drug-induced paranoid delusion of Holmes's which was cured by Freud during the detective's "disappearance" between 1891 and 1894. Readers of the defendant's best-selling book, and viewers of the movie based upon it, will recognize this "speculation" as a major element in the plot of *The Seven-Percent Solution*. In granting the defendant's motion to dismiss as to the count alleging that the novel was an infringement, the court found that both the article and the book drew heavily upon a common source: Conan Doyle's earlier story "The Final Problem." Further,

the court did not find substantial similarity between plaintiff's article, ultimately a scholarly piece on cocaine addiction at the turn of the century, and defendant's romantic fictionalization. The court indicated that the only similarity not attributable to common use of a common source was the idea that Holmes was cured of his addiction by Freud and concluded that, since copyright does not protect such ideas or basic plot concepts, the claim of infringement must fail.

Courts have struggled not only with the idea-expression dichotomy but also with another distinction fundamental to copyright: the difference between copyright as property and the property interest in concrete objects in which copyrighted works are embodied. This theoretical distinction between corporeal and incorporeal forms of property becomes a matter of very practical concern in the context of the "first sale doctrine" and its application in infringement actions.

*Lantern Press, Inc. v. American Publishers Co.*, 419 F. Supp. 1267 (E.D.N.Y., Sept. 28, 1976), was an infringement action brought by a publisher of copyrighted hardback books for young people against a company which purchased authorized paperback reprints of plaintiff's books, "prebound" them to enhance durability, and sold these significantly less expensive copies to libraries and educational institutions. In holding for the defendant, the court noted that copyright is distinct from the property in any given copy and that, if a copy of a work has been sold by the copyright owner or by his express licensee, the purchaser of a such a copy has the implicit authority to resell the work at his own price. Prebinding paperbacks, as here, allowed a mere purchaser of copies to compete effectively with the original hardback publisher for a traditional part of the hardbound book market. But the court found the apparent inequity to be nonexistent because the "additional sales price is not a profit on the copyright but on the durability given the books."

A more difficult problem arising out the "first sale doctrine" is shown by the decision in *United States v. Wise*, 550 F.2d 1180 (9th Cir., Mar. 28, 1977), a case concerning the alleged criminal infringement of copyright in motion pictures. The defendant, in addition to challenging the constitutionality of the criminal infringement section of the 1909 statute on grounds of vagueness, asserted the failure of the government to prove an essential element of their

case: the absence of a "first sale." The court agreed as to certain counts, noting that the elements of criminal copyright infringement by vending included not only a showing that the acts were "willful" and "for profit" but also the "absence of a first sale as to those articles sold by the defendant." The court examined the legal devices through which copies of films became available to the members of the public: exhibition and distribution contracts reserved title in the copies with the film company and were not "first sales"; television exhibition contracts which allowed networks to acquire extra copies were not "first sales" when all prints were to be destroyed and title to prints was retained by the licensor. However, a television exhibition contract which did not contain an express reservation of title and which granted the network an option to purchase a "file screening copy" was treated differently. With respect to that work, the court ruled:

No evidence was adduced at trial as to whether ABC exercised its election, or, if it did, whether it resold that print. In the absence of such proof, the Government has failed in its burden of proving the absence of first sale of the photoplay.

In addition to distribution contracts, the court examined "VIP contracts" under which major performers acquire personal copies of films (usually their own films). As with the distribution contracts, the court found that contracts which retained title in the film company and imposed restrictions on use did not operate as "first sales." A contract with restrictions but no express reservation of title was characterized as "a transaction strongly resembling a sale with restrictions on the use of the print." In the absence of evidence as to its whereabouts, the court concluded that the government had failed to carry its burden of proof in showing no "first sale."

#### Renewal of Copyright and Recordation

For all of the time America has spent becoming familiar with the vagaries of the 1909 copyright law, it continues to surprise to the very last. One of the bigger surprises was *Rohauer v. Killiam Shows, Inc.*, 192 USPQ 545 (2d Cir., Jan. 7, 1977), *cert. den.*, 194 USPQ 304 (May 31, 1977). The issue, arising out of the renewal copyrights in the story "The Sons of the Sheik," by Edith Hull, and the classic film *Son of the Sheik*, was:

When the author of a copyrighted story has assigned the motion picture rights and consented to the assignee's securing a copyright on motion picture versions, with the terms of the assignment demonstrating an intention that the rights of the purchaser shall extend through a renewal of the copyright on the story, does a purchaser which has made a film and obtained a derivative copyright and renewal copyright thereon infringe the copyright on the story if it authorizes the performance of the copyrighted film after the author has died and the copyright on the story has been renewed by a statutory successor under 17 U.S.C. §24, who has made a new assignment of motion picture and television rights?

Examining the second clause of section 7 of the 1909 act, which provides that the publication of new works "shall not affect the force or validity of any subsisting copyright upon the matter employed," the court stated that the intention of the law was to protect authors of original works against two risks which arose out of the recognition in section 7 of derivative copyrights: (1) that derivative copyrights not be construed as granting "an exclusive right to such use of the original works," and (2) that "nothing done by the proprietor of the derivative copyright should impair the underlying copyright." In the light of this analysis, the court concluded that:

The "force or validity" clause has no bearing on the problem here before us, that is rather how far an author's consent under the first clause of §7 continues to authorize publication of the copyrighted derivative work during a renewal term of the underlying copyright secured by a statutory successor under §24.

The court indicated that looking to the cases construing the renewal provision of the 1909 law also failed to generate meaningful precedent. The Supreme Court decisions in *Fox Film Corp. v. Knowles*, 261 U.S. 326 (1923), *Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U.S. 643 (1943), *DeSylva v. Ballentine*, 351 U.S. 570 (1956), and *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373 (1960), were distinguished in that "[n]one involved the question here presented of effecting a proper reconciliation between the grant of derivative copyright in §7 and the final provision of §24 with respect to renewals of underlying copyrights." Lower court decisions as venerable as *Fitch v. Shubert*, 20 F. Supp. 314 (S.D.N.Y., 1937) and as influential as *G. Ricordi and Co. v. Paramount Pictures*, 189 F.2d 469 (2d Cir.), cert. den., 342 U.S. 849 (1951), were also held inapplicable; both

were regarded as involving assignments or licenses where there was no bargaining for renewal rights. Attempting to cope with what appeared to be a case of first impression, the court looked toward "policy considerations" underlying the copyright act and concluded that they lay "preponderantly in favor of the proprietor of the derivative copyright." The principal factor weighing in favor of owner of the derivative copyright was, ultimately, that "a person who with the consent of the author has created an opera or a motion picture film will often have made contributions both literary, musical and economic as great as or greater than the original author." Other considerations also weighed in favor of the derivative copyright proprietor; purchasers of derivative rights would have great difficulty in protecting their interests "against the inevitability of the author's death before the renewal period," whereas authors can protect heirs by limiting assignments to the original term. The court found these considerations to be reflected in section 203(b) (1) and section 304(c)(6)(A) of the new copyright law, which will provide, after January 1, 1978, that derivative works prepared under terminable grants can "continue to be utilized under the terms of the grant after its termination." This provision, the court felt, demonstrated a belief on the part of Congress of the need for special protection for derivative works.

The decision in *Rohauer* may conflict to a degree with the earlier holding in *Filmvideo Releasing Corp. v. Hastings*, 426 F. Supp. 690 (S.D.N.Y., Oct. 20, 1976). That case involved alleged infringements of seventeen Hopalong Cassidy books, all of which were copyrighted and renewed by the author or his executor. Under contracts with the author, Paramount Pictures made and distributed seventeen copyrighted "Hoppy" films. The copyright in the films, however, lapsed due to Paramount's failure to renew during the 1960s. The plaintiff purchased negatives of the Paramount films, with the contractual restriction that copies be made only for foreign exploitation. Plaintiff sought a declaratory judgment that the renewal copyrights in the novels were invalid or that the motion pictures, being public domain, may be used (e.g., by television broadcast) without restriction. Citing the lower court holding in *Rohauer v. Killiam Shows* as well as *Ricordi and Grove Press v. Greenleaf Publishing Co.*, 247 F. Supp. 518 (E.D.N.Y., 1965), the court held that the permission of the renewal copyright owner in the

underlying literary work was necessary to allow the exploitation of the public domain films. The failure to renew the copyright in the motion pictures, the court stressed, is no evidence of the intent of the novelist to abandon his copyright on the underlying work.

The effect of recordation of assignments of copyright with the Copyright Office was one of the issues considered in *Lottie Joplin Thomas Trust v. Crown Publishers*, 75 Cir. 1940 (S.D.N.Y., May 26, 1977). The copyrights in three Scott Joplin compositions were renewed by Joplin's widow, who in turn assigned the copyrights to the Joplin Thomas Trust. The original trustee, purporting to act as executor of Scott Joplin's estate, assigned the copyrights to his own music company. Following the trustee's death, the music company fell under the control of defendant's purported licensor. The defendant brought out a set of records that included recordings of the compositions at issue. Earlier, defendant had sought a recording license from the Harry Fox Agency but was informed that the agency did not have the authority to conclude a license. The defendant then searched the records of the Copyright Office and noted the trustee's assignment to the music company. In response to the infringement action brought by the trust, the defendant asserted copyright ownership under the assignment from the original trustee's music company. Under section 210 of the copyright act, the effect of recording that assignment with the Copyright Office, defendant argued, was to "accord prima facie validity to the assignment . . . and that such validity has not been rebutted." The court flatly rejected this contention:

The parties have not cited, nor has the court's research uncovered, a single case holding that a copyright assignment on file with the Copyright Office is prima facie evidence of the facts stated therein.

The court concluded that, even had this proposition been recognized, the burden of overcoming prima facie validity had been satisfied by the plaintiff. Viewing the trustee's actions in their entirety, the court held the trustee's assignment invalid: the trustee was not the "executor" of Scott Joplin's estate (he died intestate and the trustee was not the administrator) and the assignment, judged in the assignor's capacity as trustee, was made "without consultation with the Trust's counsel, without consideration to the Trust, without making a record in Trust files of his assignment."

In *Richear Music Co. v. Towns*, 385 N.Y. Supp. 2d 779 (App. Div. 1976), in which neither transferee recorded his assignment of copyright within three months of execution, it was held that plaintiff should prevail under the earlier assignment since section 30 of the copyright statute did not apply because it is "only between a subsequent bona fide purchaser (without notice who has given consideration) who has recorded within three months of the assignment, and a prior assignee who has failed to record within three months after its execution . . . that it becomes of moment."

#### Infringement and Defenses

One of the most important concepts of copyright—"fair use"—has been a judicial creation built up out of many decided cases and now expressly recognized in the new copyright statute; the courts continued during the year to consider fair use in a number of disputes. The most interesting and perhaps provocative of these fair use cases was *Meeropol v. Nizer*, 417 F. Supp. 1201 (S.D.N.Y., July 20, 1976), which arose out of the reproduction of portions of the prison letters of Julius and Ethel Rosenberg, first published in 1953 as part of a copyrighted collection of the Rosenberg letters by Louis Nizer in his best-seller *The Implosion Conspiracy*, dealing with the Rosenberg trial. The plaintiff's main assault upon Nizer's defense of fair use was: (1) that the book is not a serious historical work entitled to the protection of fair use, (2) that both in quantity and quality the copied 1,957 words were substantial takings, beyond fair use, and (3) that the reproduction of material from the Rosenberg letters had a negative impact on the market for the copyrighted collection of letters first published in 1953. The court rejected the last two arguments without much discussion, concentrating principally upon the issues raised in the plaintiff's allegation that the work was not entitled to the defense of fair use owing to its lack of rigorous scholarship. In support of the proposition that *The Implosion Conspiracy* lacked merit, plaintiff submitted fourteen affidavits from recognized academicians stating that the Nizer work was "riddled with distortions and inaccuracies" and lacked historical value. The court found this offer of expert testimony irrelevant because:

In order to be a "historical" work for the purposes of invoking the fair use doctrine, defendants' book need not

evidence (even a minimum) scholarly effort or be in the form prescribed by academic historians.

To the court, the chief factors in evaluating the defendant's claim of fair use were the character and purpose of the use and the nature of the defendant's work. Here, the factors were infused with the effort to produce a work dealing with historical events, regardless of whether or not the results were "scholarly" in a formal sense. The court set out the test for determining the bounds of fair use, applied to historical letters, as:

(1) whether the taking is limited in scope, and (2) whether in the context of the entire work it appears that the purpose of using the letters is to illustrate historical facts with which the work deals rather than to capitalize on the unique intellectual product of the person who wrote them.

Fair use has frequently been raised as a defense in actions involving the alleged infringement of a work by a parody or burlesque. *MCA, Inc. v. Wilson*, 425 F. Supp. 443 (S.D.N.Y., Oct. 21, 1976), was such a case, and in deciding the controversy the court scrutinized the concept of "burlesque" in a fashion the *Nizer* court declined to engage in with respect to what was a "historical" work. Plaintiff's song, the "Boogie Woogie Bugle Boy of Company B" was alleged to be infringed by a sexually explicit parody utilizing the melody of the well-known original. The composers of the parody version admitted familiarity with plaintiff's composition and ample testimony was addressed to demonstrate that copying was substantial and intentional. Defendant principally relied on fair use as a defense, asserting that the intention behind copying the plaintiff's work was to burlesque legitimately the music of the 1940s. The court, stating that burlesques are allowed more extensive use of copyrighted works than other creations using copyrighted materials, questioned whether or not the defendant's sexual parody was a "burlesque" entitled to claim fair use protection. The court, in ruling for the plaintiff, concluded that defendant did not intend to caricature or ridicule the plaintiff's song; rather, the song was appropriated for defendant's satire on sexual mores—"to take innocent music and combine it with words often considered taboo."

*Amana Refrigeration, Inc. v. Consumers Union of the United States, Inc.*, 431 F. Supp. 324 (N.D. Iowa, Apr. 28, 1977), concerned defendant's

counterclaim for copyright infringement arising out of the unauthorized reproduction of defendant's favorable evaluation of plaintiff's product. Not reproduced, or mentioned, was defendant's subsequent unfavorable evaluation. Against plaintiff's claim of fair use, the court noted that the reproduction was not in the context of critical comment on either of defendant's evaluations. It rejected the defense and, in granting summary judgment in favor of defendant, observed:

Had plaintiff referred to both articles in an attempt to show defendant's inconsistent position on microwave ovens fair use might be involved.

*N.Y. Times v. Roxbury Data Interface*, 2 Med. L. Rptr. 2209 (D.N.J., May 3, 1977) raises questions perhaps of special interest to not-for-profit institutions creating or using a variety of computerized information data bases. In this case the plaintiff sought to restrain the defendant from producing a twenty-two volume personal name index to the *Annual New York Times Index*. Defendant's work involved examining each volume of the *New York Times Index* for 1851 to 1974 and pulling all personal names and dates of birth and death and assembling the citations in a single index to the annuals. The plaintiff asserted that the copyright in the *Annual Index* was infringed by defendant's copying of the names compiled in the *Index*, that the copyright in the *New York Times Index* extended beyond the creativity involved in correlating the data in an index, and that it prevented the extraction of the information indexed. The court never reached this issue; for, having assumed this argument as correct, it proceeded to consider whether the use by the defendant was a fair use by application of the four tests set out in section 107 of Pub. L. 94-553, as interpreted by the legislative reports. In considering the purpose and character of the use, the court observed that, while the work was commercial and done for profit, the intention and effect would be to facilitate effective research by saving time. Without defendant's work, researchers would be compelled to search in indexes for all forty volumes of the *Annual New York Times Index*. The "nature of the work" was also examined, and the court concluded that, since the *New York Times Index* was a collection of facts, defendant had greater license to use portions of the *New York*

*Times Index* under the fair use doctrine than he would have if a creative work had been involved. As to quantity, the court noted that only names and vital dates were taken by defendant; data correlating names to the pages of the *Times* were *not* duplicated. That defendant's index was to the actual work relied upon, and not to the newspaper which that work indexed, was particularly significant; in considering the impact on the actual market for plaintiff's work, the court stressed that the defendant's work is "useless unless its user has access to the *Times Index*." Indeed, the court could not see how both publications were competing for the same institutional dollars, even though both appealed to the same institutions—libraries. Finally, plaintiff's characterization of defendant's index as a derivative work depriving the *Times* of the right to fully exploit its copyrights was also rejected. The court, distinguishing the cases dealing with directories, found that defendant's work was "not another version of plaintiff's work, but a work with an entirely different function and form."

*Wainright & Co. v. Wall Street Transcript Corp.*, 418 F. Supp. 620 (S.D.N.Y., Aug. 19, 1976), *id.*, 2 Med. L. Rptr. 2153 (2d Cir., June 15, 1977), demonstrated that fair use in the context of mass circulation periodicals and their derivative works may be much broader than it is with respect to specialized newsletters. The copyrighted newsletters in *Wainright* were created and published by a brokerage house and involved their market research for 900 institutions. Plaintiff's major profits were derived from these published research reports, which covered 30 industrial areas and 275 corporations. Included in the reports were analytical conclusions and predictions. The defendant in *Wainright* published a weekly newspaper which carried, as a regularly advertised feature, highlighted summaries of plaintiff's reports. In the trial court, defendant argued that plaintiff's reports were "factual" and hence not copyrightable, that the defendant's abstracts gave the public information it had a right to know under the First Amendment, and that the use was a fair use. All these assertions were rejected by the trial court, which found that the reports did not lack originality and that, while factual information is not copyrightable *per se*, defendant did not use only the facts in plaintiff's reports but went further, abstracting the creative expression of these facts in the reports. The claim of protection under the First Amendment was also

rejected, since the reports in question were not "news events" whose full coverage is protected by the Constitution. Instead, bearing in mind the unprotectability of facts themselves, the court held that the "original analytical contents, the style, impressions, estimates, assessments, and appraisals of the reports were protected, as in the particular expression of the facts." The claim of fair use in these abstracts was vigorously rejected: the takings were deemed "substantial in quality, and absolutely, if not relatively, substantial in quantity" and the abstracts were characterized as "suck[ing] the marrow from the bone of Wainright's work without even the assertion of any independent research by the Transcript." On appeal, the defendant argued the claim of fair use again, emphasizing that plaintiff's reports themselves were news events, the coverage of which would also be protected by the First Amendment. The court of appeals observed that one of the purposes of the fair use doctrine is to reconcile the rights assured by the First Amendment with the proprietary interest of copyright, and that the legal protection of expression does not mean protecting the factual material expressed, particularly where the material is newsworthy. The court concluded that the essence of infringement lies not in taking a general theme or in coverage of the reports as events, but in appropriating the particular expression through similarities of treatment, and that here both expression and facts were appropriated, with "the obvious intent, if not the effect, of fulfilling the demand for the original work."

*Bright Tunes Music Corp. v. Harrisongs Music, Ltd.*, 420 F. Supp. 177 (S.D.N.Y., Aug. 31, 1976), showed that infringement can, in music at least, be the product of unconscious as well as conscious copying. Plaintiff, the composer of "He's So Fine," alleged copyright infringement of that work by defendant's "My Sweet Lord." Both songs used a strikingly similar short musical phrase. Further, both had an identical grace note in the second repetition of the phrase, and the harmonies were identical. The court observed that plaintiff's song had been highly popular in the United Kingdom and that defendant was familiar with the work, but that defendant had set out the development of "My Sweet Lord" as an entirely independent creation. Nonetheless, noting access and the striking similarities between the two works, the court concluded that Harrison did take from plaintiff's work, not

deliberately, but "because his subconscious knew it already had worked in a song his conscious mind did not remember."

Both the 1909 law and the new act provide that the court may award a reasonable attorney's fee "to the prevailing party." In *Balcaen v. Hirschberger*, 415 F. Supp. 333 (E.D. Wisc., June 23, 1976), the question was whether a party that received an award

of damages through a settlement agreement, rather than by a determination of the court on the merits, was the prevailing party. The ruling of Chief Judge Reynolds was that the deciding factor is "success at the conclusion of all proceedings, not by what means that success is obtained" and that the court therefore had discretion to award a reasonable attorney's fee.

Respectfully submitted,

BARBARA RINGER  
*Register of Copyrights*

*International Copyright Relations of the United States as of September 30, 1977*

This table sets forth U.S. copyright relations of current interest with the other independent nations of the world. Each entry gives country name and alternate name and a statement of copyright relations. The following code is used:

<b>Bilateral</b>	Bilateral copyright relations with the United States by virtue of a proclamation or treaty, as of the date given. Where there is more than one proclamation or treaty, only the date of the first one is given.
<b>BAC</b>	Party to the Buenos Aires Convention of 1910, as of the date given. U.S. ratification deposited with the government of Argentina, May 1, 1911; proclaimed by the President of the United States, July 13, 1914.
<b>UCC Geneva</b>	Party to the Universal Copyright Convention, Geneva, 1952, as of the date given. The effective date for the United States was September 16, 1955.
<b>UCC Paris</b>	Party to the Universal Copyright Convention as revised at Paris, 1971, as of the date given. The effective date for the United States was July 10, 1974.
<b>Phonogram</b>	Party to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Geneva, 1971, as of the date given. The effective date for the United States was March 10, 1974.
	<i>Foreign sound recordings fixed and published on or after February 15, 1972, with the special notice of copyright prescribed by law (e.g., ©1977 Doe Records, Inc.), may be entitled to U.S. copyright protection only if the author is a citizen of one of the countries with which the United States maintains bilateral or phonogram convention relations as indicated below.</i>
<b>Unclear</b>	Became independent since 1943. Has not established copyright relations with the United States, but may be honoring obligations incurred under former political status.
<b>None</b>	No copyright relations with the United States.

**Afghanistan**  
None

**Albania**  
None

**Algeria**  
UCC Geneva Aug. 28, 1973  
UCC Paris July 10, 1974

**Andorra**  
UCC Geneva Sept. 16, 1955

**Angola**  
Unclear

**Argentina**  
Bilateral Aug. 23, 1934  
BAC April 19, 1950  
UCC Geneva Feb. 13, 1958  
Phonogram June 30, 1973

**Australia**  
Bilateral Mar. 15, 1918  
UCC Geneva May 1, 1969  
Phonogram June 22, 1974

**Austria**  
Bilateral Sept. 20, 1907  
UCC Geneva July 2, 1957

**Bahamas, The**  
UCC Geneva July 10, 1973  
UCC Paris Dec. 27, 1976

**Bahrain**  
None

**Bangladesh**  
UCC Geneva Aug. 5, 1975  
UCC Paris Aug. 5, 1975

**Barbados**  
Unclear

**Belgium**  
Bilateral July 1, 1891  
UCC Geneva Aug. 31, 1960

**Benin**  
(formerly Dahomey)  
Unclear

**Bhutan**  
None

**Bolivia**  
BAC May 15, 1914

**Botswana**  
Unclear

**Brazil**  
Bilateral Apr. 2, 1957  
BAC Aug. 31, 1915  
UCC Geneva Jan. 13, 1960  
UCC Paris Dec. 11, 1975  
Phonogram Nov. 28, 1975

**Bulgaria**  
UCC Geneva June 7, 1975  
UCC Paris June 7, 1975

**Burma**  
Unclear

**Burundi**  
Unclear

**Cambodia**  
(Democratic Kampuchea)  
UCC Geneva Sept. 16, 1955

**Cameroon**  
UCC Geneva May 1, 1973  
UCC Paris July 10, 1974

**Canada**  
Bilateral Jan. 1, 1924  
UCC Geneva Aug. 10, 1962

**Cape Verde**  
Unclear

**Central African Empire**  
Unclear

**Chad**  
Unclear

**Chile**  
Bilateral May 25, 1896  
BAC June 14, 1955  
UCC Geneva Sept. 16, 1955

- China**  
Bilateral Jan. 13, 1904
- Colombia**  
BAC Dec. 23, 1936  
UCC Geneva June 18, 1976  
UCC Paris June 18, 1976
- Comoros**  
Unclear
- Congo**  
Unclear
- Costa Rica<sup>1</sup>**  
Bilateral Oct. 19, 1899  
BAC Nov. 30, 1916  
UCC Geneva Sept. 16, 1955
- Cuba**  
Bilateral Nov. 17, 1903  
UCC Geneva June 18, 1957
- Cyprus**  
Unclear
- Czechoslovakia**  
Bilateral Mar. 1, 1927  
UCC Geneva Jan. 6, 1960
- Denmark**  
Bilateral May 8, 1893  
UCC Geneva Feb. 9, 1962  
Phonogram Mar. 24, 1977
- Djibouti**  
Unclear
- Dominican Republic<sup>1</sup>**  
BAC Oct. 31, 1912
- Ecuador**  
BAC Aug. 31, 1914  
UCC Geneva June 5, 1957  
Phonogram Sept. 14, 1974
- Egypt**  
None
- El Salvador**  
Bilateral June 30, 1908, by virtue  
of Mexico City Convention, 1902
- Equatorial Guinea**  
Unclear
- Ethiopia**  
None
- Fiji**  
UCC Geneva Oct. 10, 1970  
Phonogram Apr. 18, 1973
- Finland**  
Bilateral Jan. 1, 1929  
UCC Geneva Apr. 16, 1963  
Phonogram Apr. 18, 1973
- France**  
Bilateral July 1, 1891  
UCC Geneva Jan. 14, 1956  
UCC Paris July 10, 1974  
Phonogram Apr. 18, 1973
- Gabon**  
Unclear
- Gambia, The**  
Unclear
- Germany**  
Bilateral Apr. 15, 1892  
UCC Geneva with Federal Republic  
of Germany Sept. 16, 1955  
UCC Paris with Federal Republic of  
Germany July 10, 1974  
Phonogram with Federal Republic  
of Germany May 18, 1974  
UCC Geneva with German Demo-  
cratic Republic Oct. 5, 1973
- Ghana**  
UCC Geneva Aug. 22, 1962
- Greece**  
Bilateral Mar. 1, 1932  
UCC Geneva Aug. 24, 1963
- Grenada**  
Unclear
- Guatemala<sup>1</sup>**  
BAC Mar. 28, 1913  
UCC Geneva Oct. 28, 1964  
Phonogram Feb. 1, 1977
- Guinea**  
Unclear
- Guinea-Bissau**  
Unclear
- Guyana**  
Unclear
- Haiti**  
BAC Nov. 27, 1919  
UCC Geneva Sept. 16, 1955
- Honduras<sup>1</sup>**  
BAC Apr. 27, 1914
- Hungary**  
Bilateral Oct. 16, 1912  
UCC Geneva Jan. 23, 1971  
UCC Paris July 10, 1974  
Phonogram May 28, 1975
- Iceland**  
UCC Geneva Dec. 18, 1956
- India**  
Bilateral Aug. 15, 1947  
UCC Geneva Jan. 21, 1958  
Phonogram Feb. 12, 1975
- Indonesia**  
Unclear
- Iran**  
None
- Iraq**  
None
- Ireland**  
Bilateral Oct. 1, 1929  
UCC Geneva Jan. 20, 1959
- Israel**  
Bilateral May 15, 1948  
UCC Geneva Sept. 16, 1955
- Italy**  
Bilateral Oct. 31, 1892  
UCC Geneva Jan. 24, 1957  
Phonogram Mar. 24, 1977
- Ivory Coast**  
Unclear
- Jamaica**  
None
- Japan<sup>2</sup>**  
UCC Geneva Apr. 28, 1956
- Jordan**  
Unclear
- Kenya**  
UCC Geneva Sept. 7, 1966  
UCC Paris July 10, 1974  
Phonogram April 21, 1976
- Korea**  
Unclear
- Kuwait**  
Unclear
- Laos**  
UCC Geneva Sept. 16, 1955
- Lebanon**  
UCC Geneva Oct. 17, 1959

<b>Lesotho</b> Unclear	<b>Nauru</b> Unclear	<b>Portugal</b> Bilateral July 20, 1893 UCC Geneva Dec. 25, 1956
<b>Liberia</b> UCC Geneva July 27, 1956	<b>Nepal</b> None	<b>Qatar</b> None
<b>Libya</b> Unclear	<b>Netherlands</b> Bilateral Nov. 20, 1899 UCC Geneva June 22, 1967	<b>Romania</b> Bilateral May 14, 1928
<b>Liechtenstein</b> UCC Geneva Jan. 22, 1959	<b>New Zealand</b> Bilateral Dec. 1, 1916 UCC Geneva Sept. 11, 1964 Phonogram Aug. 13, 1976	<b>Rwanda</b> Unclear
<b>Luxembourg</b> Bilateral June 29, 1910 UCC Geneva Oct. 15, 1955 Phonogram Mar. 5, 1976	<b>Nicaragua</b> <sup>1</sup> BAC Dec. 15, 1913 UCC Geneva Aug. 16, 1961	<b>San Marino</b> None
<b>Madagascar</b> (Malagasy Republic) Unclear	<b>Niger</b> Unclear	<b>Sao Tome and Principe</b> Unclear
<b>Malawi</b> UCC Geneva Oct. 26, 1965	<b>Nigeria</b> UCC Geneva Feb. 14, 1962	<b>Saudi Arabia</b> None
<b>Malaysia</b> Unclear	<b>Norway</b> Bilateral July 1, 1905 UCC Geneva Jan. 23, 1963 UCC Paris Aug. 7, 1974	<b>Senegal</b> UCC Geneva July 9, 1974 UCC Paris July 10, 1974
<b>Maldives</b> Unclear	<b>Oman</b> None	<b>Seychelles</b> Unclear
<b>Mali</b> Unclear	<b>Pakistan</b> UCC Geneva Sept. 16, 1955	<b>Sierra Leone</b> None
<b>Malta</b> UCC Geneva Nov. 19, 1968	<b>Panama</b> BAC Nov. 25, 1913 UCC Geneva Oct. 17, 1962 Phonogram June 29, 1974	<b>Singapore</b> Unclear
<b>Mauritania</b> Unclear	<b>Papua New Guinea</b> Unclear	<b>Somalia</b> Unclear
<b>Mauritius</b> UCC Geneva Mar. 12, 1968	<b>Paraguay</b> BAC Sept. 20, 1917 UCC Geneva Mar. 11, 1962	<b>South Africa</b> Bilateral July 1, 1924
<b>Mexico</b> Bilateral Feb. 27, 1896 BAC Apr. 24, 1964 UCC Geneva May 12, 1957 UCC Paris Oct. 31, 1975 Phonogram Dec. 21, 1973	<b>Peru</b> BAC April 30, 1920 UCC Geneva Oct. 16, 1963	<b>Soviet Union</b> UCC Geneva May 27, 1973
<b>Monaco</b> Bilateral Oct. 15, 1952 UCC Geneva Sept. 16, 1955 UCC Paris Dec. 13, 1974 Phonogram Dec. 2, 1974	<b>Philippines</b> Bilateral Oct. 21, 1948 UCC status undetermined by Unesco. (Copyright Office considers that UCC relations do not exist.)	<b>Spain</b> Bilateral July 10, 1895 UCC Geneva Sept. 16, 1955 UCC Paris July 10, 1974 Phonogram Aug. 24, 1974
<b>Mongolia</b> None	<b>Poland</b> Bilateral Feb. 16, 1927 UCC Geneva Mar. 9, 1977 UCC Paris Mar. 9, 1977	<b>Sri Lanka</b> Unclear
<b>Morocco</b> UCC Geneva May 8, 1972 UCC Paris Jan. 28, 1976		<b>Sudan</b> Unclear
<b>Mozambique</b> Unclear		<b>Surinam</b> Unclear
		<b>Swaziland</b> Unclear

<b>Sweden</b> Bilateral June 1, 1911 UCC Geneva July 1, 1961 UCC Paris July 10, 1974 Phonogram Apr. 18, 1973	<b>Tunisia</b> UCC Geneva June 19, 1969 UCC Paris June 10, 1975	<b>Vatican City</b> (Holy See) UCC Geneva Oct. 5, 1955
<b>Switzerland</b> Bilateral July 1, 1891 UCC Geneva Mar. 30, 1956	<b>Turkey</b> None	<b>Venezuela</b> UCC Geneva Sept. 30, 1966
<b>Syria</b> Unclear	<b>Uganda</b> Unclear	<b>Vietnam</b> Unclear
<b>Tanzania</b> Unclear	<b>United Arab Emirates</b> None	<b>Western Samoa</b> Unclear
<b>Thailand</b> Bilateral Sept. 1, 1921	<b>United Kingdom</b> Bilateral July 1, 1891 UCC Geneva Sept. 27, 1957 UCC Paris July 10, 1974 Phonogram Apr. 18, 1973	<b>Yemen (Aden)</b> Unclear
<b>Togo</b> Unclear	<b>Upper Volta</b> Unclear	<b>Yemen (San'a)</b> None
<b>Tonga</b> None	<b>Uruguay</b> BAC Dec. 17, 1919	<b>Yugoslavia</b> UCC Geneva May 11, 1966 UCC Paris July 10, 1974
<b>Trinidad and Tobago</b> Unclear		<b>Zaire</b> Unclear
		<b>Zambia</b> UCC Geneva June 1, 1965

<sup>1</sup> Effective June 30, 1908, this country became a party to the 1902 Mexico City Convention, to which the United States also became a party effective the same date. As regards copyright relations with the United States, this convention is considered to have been superseded by adherence of this country and the United States to the Buenos Aires Convention of 1910.

<sup>2</sup> Bilateral copyright relations between Japan and the United States, which were formulated effective May 10, 1906, are considered to have been abrogated and superseded by the adherence of Japan to the Universal Copyright Convention, Geneva, 1952, effective April 28, 1956.

*Number of Registrations by Subject Matter Class, Fiscal Years 1973-77*

Class	Subject matter of copyright	1973	1974	1975	1976	1977
A	Books, including pamphlets, leaflets, etc. . . . .	104,523	104,806	111,887	113,197	122,080
B	Periodicals (issues) . . . . .	88,553	92,224	95,062	96,001	106,474
	(BB) Contributions to newspapers and periodicals . . . . .	2,074	2,172	2,554	3,090	3,371
C	Lectures, sermons, addresses . . . . .	1,714	1,631	1,882	1,844	1,976
D	Dramatic or dramatico-musical compositions . . .	3,980	4,016	4,914	4,929	5,462
E	Musical compositions . . . . .	95,296	104,511	114,790	118,499	131,236
F	Maps . . . . .	1,914	1,549	1,847	1,595	1,845
G	Works of art, models, or designs . . . . .	8,621	8,525	11,010	12,197	13,749
H	Reproductions of works of art . . . . .	3,190	3,612	5,042	5,604	4,446
I	Drawings or plastic works of a scientific or technical character . . . . .	1,114	809	856	949	1,437
J	Photographs . . . . .	1,354	1,409	1,507	1,667	2,176
K	Prints and pictorial illustrations . . . . .	4,441	4,716	5,082	5,918	6,689
	(KK) Commercial prints and labels . . . . .	4,216	4,964	4,663	4,485	5,039
L	Motion-picture photoplays . . . . .	1,449	1,321	1,011	1,904	2,589
M	Motion pictures not photoplays . . . . .	1,420	1,741	2,027	2,345	2,552
N	Sound recordings . . . . .	6,718	9,362	8,938	9,048	10,628
R	Renewals of all classes . . . . .	23,071	25,464	28,202	27,697	30,953
	Total . . . . .	353,648	372,832	401,274	410,969	452,702

*Number of Articles Deposited, Fiscal Years 1973-77*

Class	Subject matter of copyright	1973	1974	1975	1976	1977
A	Books, including pamphlets, leaflets, etc. . . . .	206,671	206,905	220,523	223,384	241,060
B	Periodicals . . . . .	176,142	183,474	189,085	191,294	211,807
	(BB) Contributions to newspapers and periodicals . . . . .	2,074	2,172	2,554	3,090	3,371
C	Lectures, sermons, addresses . . . . .	1,714	1,631	1,882	1,844	1,976
D	Dramatic or dramatico-musical compositions . . .	4,538	4,567	5,450	5,337	6,099
E	Musical compositions . . . . .	114,378	124,481	134,786	135,920	153,003
F	Maps . . . . .	3,786	3,098	3,680	3,189	3,690
G	Works of art, models, or designs . . . . .	14,843	14,611	18,895	20,644	23,233
H	Reproductions of works of art . . . . .	6,313	7,126	9,966	11,183	8,844
I	Drawings or plastic works of a scientific or technical character . . . . .	1,873	1,226	1,327	1,491	2,250
J	Photographs . . . . .	2,471	2,481	2,612	2,731	3,859
K	Prints and pictorial illustrations . . . . .	8,873	9,427	10,100	11,839	13,351
	(KK) Commercial prints and labels . . . . .	8,408	9,920	9,321	8,920	9,845
L	Motion-picture photoplays . . . . .	2,855	2,562	1,919	3,594	5,099
M	Motion pictures not photoplays . . . . .	2,654	3,115	3,665	4,189	4,527
N	Sound recordings . . . . .	13,388	18,431	17,586	16,880	20,513
	Total . . . . .	570,981	595,227	633,351	645,529	712,527

*Number of Articles Transferred to Other Departments of the Library of Congress<sup>1</sup>*

Class	Subject matter of articles transferred	1973	1974	1975	1976	1977
A	Books, including pamphlets, leaflets, etc. . . . .	120,452	122,157	135,092	142,392	<sup>2</sup> 147,597
B	Periodicals . . . . .	183,755	190,359	196,619	198,047	217,652
	(BB) Contributions to newspapers and periodicals . . . . .	2,074	2,196	2,562	3,090	3,371
C	Lectures, sermons, addresses . . . . .	7	0	0	0	3
D	Dramatic or dramatico-musical compositions . . .	179	184	195	146	123
E	Musical compositions . . . . .	22,517	20,558	22,816	20,685	26,338
F	Maps . . . . .	3,796	3,100	3,680	3,189	3,690
G	Works of art, models, or designs . . . . .	2,957	1,928	4,112	5,211	5,931
H	Reproductions of works of art . . . . .	2,933	2,579	2,871	2,080	2,066
I	Drawings or plastic works of a scientific or technical character . . . . .	10	0	0	0	0
J	Photographs . . . . .	66	188	565	423	492
K	Prints and pictorial illustrations . . . . .	52	65	12	20	743
	(KK) Commercial prints and labels . . . . .	38	13	0	16	35
L	Motion-picture photoplays . . . . .	38	322	103	138	101
M	Motion pictures not photoplays . . . . .	331	206	683	1,274	966
N	Sound recordings . . . . .	13,405	18,321	833	7,990	9,197
Total		352,639	362,176	377,648	384,701	418,245

<sup>1</sup>Extra copies received with deposits and gift copies are included in these figures. For some categories, the number of articles transferred may therefore exceed the number of articles deposited as shown in the preceding chart.

<sup>2</sup>Of this total, 34,200 copies were transferred to the Exchange and Gift Division for use in its programs.

*Gross Cash Receipts, Fees, and Registrations, Fiscal Years 1973-77*

	Gross receipts	Fees earned	Registrations	Increase or decrease in registrations
1973 . . . . .	\$ 2,413,179.43	\$ 2,226,540.96	\$ 353,648	+9,074
1974 . . . . .	2,411,334.59	2,312,375.71	372,832	+19,184
1975 . . . . .	2,614,059.72	2,447,295.14	401,274	+28,442
1976 . . . . .	2,779,841.45	2,524,518.77	410,969	+9,695
1977 . . . . .	2,946,492.04	2,798,682.05	452,702	+41,733
Total	13,164,907.23	12,309,412.63	1,991,425	

*Summary of Copyright Business*

Balance on hand Oct. 1, 1976		\$ 770,986.27
Gross receipts Oct. 1, 1976 to Sept. 30, 1977		2,946,492.04
<b>Total to be accounted for</b>		<b>3,717,478.31</b>
Refunded	\$ 153,112.46	
Checks returned unpaid	7,581.00	
Deposited as earned fees	2,758,255.55	
Deposited as undeliverable checks	4,209.80	
<b>Balance carried over Oct. 1, 1977</b>		
Fees earned in Sept. 1977 but not deposited until		
Oct. 1977	\$255,827.00	
Unfinished business balance	174,256.11	
Deposit accounts balance	361,506.97	
Card service	2,729.42	
	<u>794,319.50</u>	
		<u><u>3,717,478.31</u></u>

	Registrations	Fees earned
Published domestic works	283,595	\$1,701,570.00
Published foreign works	6,255	37,530.00
Unpublished works	121,317	727,902.00
Renewals	30,953	123,812.00
<b>Total registrations for fee</b>	<b>442,120</b>	<b>2,590,814.00</b>
Registrations made under provisions of law permitting registration without payment of fee for certain works of foreign origin	10,569	
Registrations made under Standard Reference Data Act, P.L. 90-396 (15 U.S.C. §290), for certain publications of U.S. government agencies for which fee has been waived	13	
<b>Total registrations</b>	<b>452,702</b>	
Fees for recording assignments		50,250.00
Fees for indexing transfers of proprietorship		35,894.50
Fees for recording notices of use		829.00
Fees for recording notices of intention to use		24,375.50
Fees for certified documents		11,421.00
Fees for searches made		78,670.00
Card service		6,428.05
<b>Total fees exclusive of registrations</b>		<b>207,868.05</b>
<b>Total fees earned</b>		<b>2,798,682.05</b>